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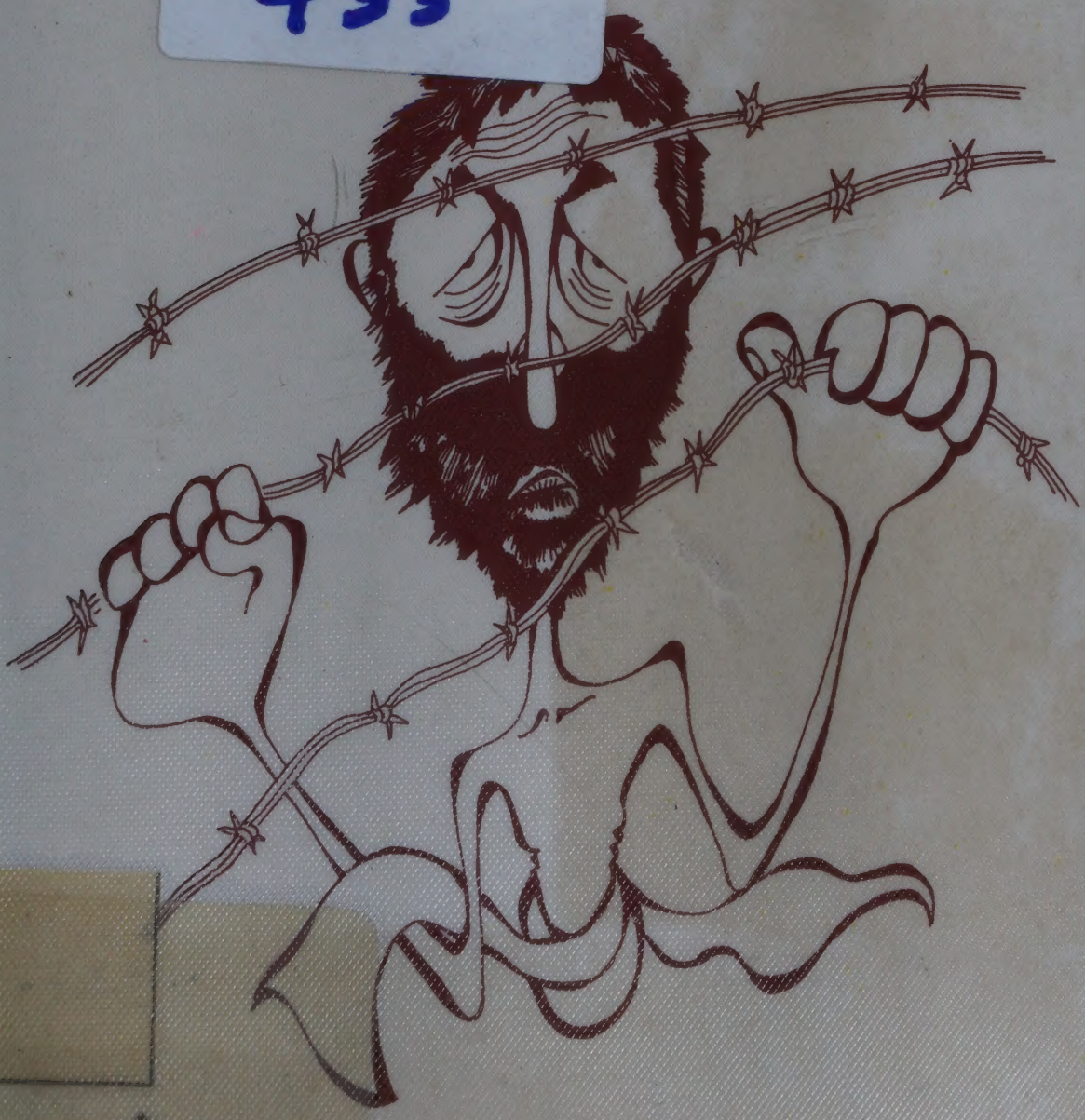

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on
SC/ST/Backward Classes

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CONTENTS

Index of cases ..... *iv*

Subject Index ..... *vii*

Introduction ..... *ix*

Summaries of Cases 1-127

INDEX OF CASES

The numbers in brackets indicate the serial number of the cases summarised in the text

A S Sailaja vs Principal (58)
Abdul Latif vs State of Bihar (5)
Abhay Shravanji vs State of Maharashtra (47)
Action Committee vs Union of India (97)
Adikanta Panda vs Gandna (38)
Akhil Bharatiya Sangh vs Union of India (34)
Ananthan vs Hony. Secretary (52)
Anil vs Dean, Medical College (48)
AP State SC Welfare vs I A (89)
Aparna Bhaye vs State of Maharashtra (84)
Appa Rao vs Director of P & T (16)
Arti Gupta vs State of Punjab (73)
Arumugham vs S Rajagopal (30)
Aruna vs State of Karnataka (53)
Atul Khullar vs State of J & K (56)
Balaji vs State of Mysore (2)
Banwasi Seva Ashram vs NTPC (94)
Basavalingappa vs D Munichinnappa (6)
Bhaiya Lal vs Hari Kishan Singh (7)
Bhaiya Ram Munda vs Anirudh Patar (17)
Bharat Sevashram Sangh vs State of Gujarat (60)
Bhupinder Singh vs State of Punjab (93)
Bihar Legal Support Society vs Chief Justice (63)
Bihar Harijan Kalyan vs Union of India (42)
CAG vs M L Mehrotra (88)
CAG vs K S Jagannathan (61)
Chitralekha vs State of Mysore (4)
Chotey Lal Pandey vs State of UP (32)
Choudhary A R vs Union of India (24)
CPI vs State of Maharashtra (77)
Dadaji vs Sukhdeobabu (33)
Desu Rayudu vs Andhra PSC (9)
Devadasan vs Union of India (3)
Devidas Hajare vs State of Maharashtra (65)

DMK Public School vs Regional Director (59)
Fatesang Gimba vs Gujarat (68)
Ghanshyam vs L D Engg. College (69)
GM, Southern Railway vs Rangachari (1)
Gopal Singh vs Giribala (91)
Gopalakrishna vs Stateof Maharashtra (64)
Gujarat Dalit Samiti vs Union of India (75)
Gundla Rao vs Dist. Collector (50)
Guntur Medical College vs Mohan Rao (31)
Gupta G K vs Union of India (25)
Hari Ganesh vs State of TN (70)
Hariharan Pillai vs State of Kerala (13)
Horo N E vs Sm Jahan Ara (22)
Indira Sawhney vs Union of India (95)
Jai Singh vs Union of India (96)
Janabai vs Laxman (49)
Janki Prasad vs State of J & K (23)
Jaswant Singh vs State of Haryana (80)
Javaed Beg vs Union of India (35)
Jayashree vs State of Kerala (28)
Joy Kanta Hira vs State of Assam (74)
Khan Abdul Hamid vs Mohd Haji Polytechnic (46)
Kumari Madhuri Patil vs Additional Commissioner (67)
Lakshmipathi vs College of Engineeering (36)
Lingappa Pochanna vs State of Maharashtra (45)
Makhan Lal vs State of J &K (18)
Malkhan Singh vs Union of India (101)
Marri Rao vs Dean (82)
Meena Merchant vs State of Maharashtra (90)
N B Rao vs Osmania Medical College (57)
Nishi Maghu vs State of J & K (29)
Parasaram vs Shivchand (14)
Periakaruppan vs State of TN (19)
Prakash Kiran vs State of Bihar (76)
Rafia Shaheen vs State of Karntaka (99)
Rajendran vs Union of India (10)
Rajendran vs State of Madaras (11)
Rajesh Patel vs State of Maharashtra (86)

Rikhi Ram vs Union of India (41)
S Ramesh vs Selection Committee (87)
Santhamma vs Kerala PSC (39)
Sarish Chandra vs State of Tripura (62)
Shantistar Builders vs Narayan Totane (83)
Sida Kumar vs Gujarat University (92)
Social Work Centre vs State of Rajasthan (71)
Soosai vs Union of India (55)
State of AP vs Nagam Chandashekhar (72)
State of Karnataka vs M P Shylaja (37)
State of AP vs P Sagar (12)
State of AP vs USV Balarama (21)
State of Kerala vs N M Thomas (27)
State of UP vs Pradip Tandon (26)
State of UP vs COD (98)
State of Punjab vs Hira Lal (20)
State of HP vs Umed Ram (54)
State of Maharashtra vs Abhay (44)
State of TN vs Ananthi Ammal (100)
Subhas Shetty vs State of Mysore (15)
Subir Kumar vs IIT (66)
Surya Narayan vs State of Rajasthan (81)
Tanuja Rajpal vs State of Maharashtra (78)
Tapan Kumar vs Convenor (79)
Triloknath Tiku vs State of J &K (8)
Vajrakalaya vs Sub-collector (85)
Vasantha Kumar vs State of Karnataka (43)
Vishwanathan vs Govt. of TN (51)

SUBJECT INDEX

The numbers in brackets refer to the serial numbers of the cases summarised in the book.

Adivasis livelihood (68)
Adoption and caste (58)
Atrocities on Harijans (96)
Backwardness, test of (4, 9, 15, 21, 23, 28)
Beggars (99)
Carry forward rule (3, 24, 101)
Caste list (32, 62,78, 79, 82,
Caste list valid only in state (16, 75)
Caste as basis of reservation (2,12, 92)
Caste and class (11, 12, 95)
Certificate of caste (39, 44, 47, 51, 57, 65, 67, 72, 84, 85, 90)
Common entrance test (36, 48)
Conversion and caste (30, 31, 55, 64)
Criminal tribes (41)
Devious means by govts. (18, 23)
Discrimination (63)
Economic criteria (28)
Election, caste of candidate (6, 7, 14, 17, 22, 30, 33, 40)
Foster parents (85)
Grant for NGOs (71)
Higher education (52, 66)
Housing (83)
Income of family (53)
Inter-caste marriage (70)
Interchange of SC/ST (87)
Land of SC/ST (38, 45, 49, 100)
Lower marks (61, 73, 76, 80)
Mandal judgment (95)
Marriage and SC/ST status (22)
Membership in coops (98)
Merit and efficiency (89, 93)
Migrants (41, 69, 78, 82, 86, 97)
Minority institutions (46)
Names of castes/tribes (37)

Panchayat election (77)
Promotion, reservation in (1, 10, 20, 27, 34, 42, 89, 95)
Qualifying marks (25)
Reservation policy, review of (19)
Reservation in judicial service (13, 32, 101)
Reservation, excessive (5)
Reservation on regional basis (26, 29, 50)
Reservation by executive order (88, 95)
Road to Harijan village (54)
School, recognition of (59)
Specialised jobs (89)
Status after migration (69, 79, 82, 86, 97)
Teachers, reservation for (60)
Temple entry (81)
Tenders (74)
Tribal child (85, 86)
Tribal resettlement (94)
Tribals or Hindus (91)
Villages, backward (56)
Women's share to property (91)

Introduction

The special protection given to the Scheduled Castes, Scheduled Tribes and Other Backward Classes under the Constitution and some other statutes has been the subject of intense debate since independence. Politicians, jurists, ordinary men and women have never ceased to discuss the unique privileges granted to the depressed classes. Very few topics have been so passionately argued about as this one. The conflicting viewpoints have often led to violence, reaching the peak during the Mandal agitation in north India in the early nineties.

The Supreme Court judges who delivered the Mandal judgment in 1992 have elaborately dealt with the reasons for the protective discrimination in favour of the depressed classes. The majority judgment stated: "Untouchability is something which no other country in the world had the misfortune to have -- nor the blessed caste system. There have been equally old civilisations on the earth like ours, if not older, but none had evolved these pernicious principles, much less did they stamp them with scriptural sanction."

One judge wrote: "This country remained under the shackles of slavery for over a thousand years. The reason for our inability to fight the foreigners was the social degeneration of India because of the caste system. To rule this country, it was not necessary to divide the people, the caste system conveyed the message: divided we are -- come and rule us."

The problem faced by this country on account of the caste system is unique. Though the position of the Dalits is often compared to that of the African-Americans in the U.S.A., its dimensions are different. The Supreme Court judgment says that the 'blacks' are a minority of 16 to 18 per cent in the U.S.A. while the SC/ ST /OBCs form the majority of the population, whatever be the method of surveying them. This is the social background against which the legal provisions have to be considered.

Though enormous amounts of spoken and written words--and blood--have been spilled over the special provisions for the depressed classes, the Constitution has only a few articles referring to them. They are mainly empowering provisions, enabling the central and the state governments to pass legislations and orders to grant protection to the backward classes. Therefore, most arguments are focussed on state laws and notifications. Questions of constitutional law have mostly been settled, especially in the 'Mandal judgement' by the Supreme Court. But the last word has not been spoken. Disputes over the implementation of the judgement and order of the Supreme Court have come up again and again. Therefore, it is essential to know the basic provisions regarding SC/ST and Backward Classes and important rulings of the Supreme Court and the high courts to understand the present problems.

The Constitution attempts to define SC and ST in Article 366. According to Article 366 (24), 'Scheduled Castes' mean such castes, races or tribes or parts of or groups within such castes, races or tribes as are deemed under Article 341 to be Scheduled Castes for the purposes of the Constitution. Article 366 (25) defines Scheduled Tribes as such tribes or tribal communities or parts of or groups within such tribes or tribal communities as are deemed under Article 342 to be Scheduled Tribes for the purposes of the Constitution.

Article 341 deals with Scheduled Castes. Article 341 (1) says: "The President may with respect to any state or Union Territory, and where it is a state after consultation with the Governor thereof by public notification, specify the castes, races or tribes or parts of or groups within castes, races or tribes which shall for the purposes of this Constitution be deemed to be Scheduled Castes in relation to that state or Union Territory as the case may be."

Article 341 (2) reads thus: "Parliament may by law include in or exclude from the list of Scheduled Castes specified in a notification issued under clause (1) any caste, race or tribe or part of or group within any caste, race or tribe, but save as aforesaid notification issued under the said clause shall not be varied by any subsequent notification."

Under this article, the President has issued several orders. The first was the Constitution (Scheduled Castes) Order 1950. It was followed by another in 1951 and 1976. Separate orders relating to states and Union Territories have also been issued.

Article 342 deals with Scheduled Tribes. Article 342 (1) reads: "The President may with respect to any state or Union Territory, and where it is a state after consultation with the government thereof by public notification, specify the tribes or tribal communities or parts of or group within tribes or tribal communities which shall for the purposes of this Constitution be deemed to be Scheduled Tribes in relation to that state or Union Territory, as the case may be."

Article 342 (2) says: "Parliament may by law include in or exclude from the list of Scheduled Tribes specified in a notification issued under clause (1) any tribe or tribal community or part of or group within any tribe or tribal community but save as aforesaid a notification issued under the said clause shall not be varied by any subsequent notification."

The other most important provisions are found in Part III enumerating the fundamental rights of the citizens. They are the following:

Article 14. Equality before law:- The state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

Article 15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth:- (1) The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

(2)No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to--

(a) access to shops, public restaurants, hotels and places of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of state funds or dedicated to the use of the general public.

(3) Nothing in this article shall prevent the state from making any special provision for women and children.

(4) Nothing in this article or in clause (2) of Article 29 shall prevent the state from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.

Article 16. Equality of opportunity in matters of public employment-(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2)No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

(3)Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a state or Union Territory, any requirement as to residence within that state or Union Territory prior to such employment or appointment.

(4)Nothing in this article shall prevent the state from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the state, is not adequately represented in the services under the state.

(5)Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination.

Article 17. Abolition of Untouchability.-"Untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of "Untouchability" shall be an offence punishable in accordance with law.

Article 29. Protection of interests of minorities.-(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2)No citizen shall be denied admission into any educational institution maintained by the state or receiving aid out of state funds on grounds only of religion, race, caste, language or any of them.

Part XVI of the Constitution enumerates "Special provisions relating to certain classes", which include SC and ST. Parts of the relevant articles are reproduced below:

Article 330. Reservation of seats for Scheduled Castes and Scheduled Tribes in the House of the People.-(1) Seats shall be reserved in the House of the People for -

(a) the Scheduled Castes;

(b) the Scheduled Tribes except the Scheduled Tribes in the autonomous districts of Assam; and

(c) the Scheduled Tribes in the autonomous districts of Assam.

(2)The number of seats reserved in any state or Union Territory for the Scheduled Castes or the Scheduled Tribes under clause (1) shall bear, as nearly as may be, the same proportion to the total number of seats allotted to that state or Union Territory in the House of the People as the population of the Scheduled Castes in the state or Union Territory or of the Scheduled Tribes in the State or Union Territory or part of the state or Union Territory, as the case may be, in respect of which seats are so reserved, bears to the total population of the state or the Union Territory.

Article 332. Reservation of seats for Scheduled Castes and Scheduled Tribes in the Legislative Assemblies of the States.- (1) Seats shall be reserved for the Scheduled Castes and

with a variety of facts and circumstance which arise at the local and regional levels in different parts of the country. It is the high courts which have to deal with allegations of bogus caste certificates, election of candidates claiming SC/ST status and conundrums like the status of a Brahmin girl who was 'adopted' by the SC family or that of a Tamil Christian woman who married a Bihar tribal with elaborate ceremonies before tribal elders. Such situations continue to arise periodically. Judges, lawyers, politicians and social activists seek light from past instances to solve the current issues. It was difficult to get all such cases in one volume so far. This compilation is the first such attempt. In this work, the reader can trace the progress of law through judicial interpretation over the years. Some judgements have been modified or overruled by the Supreme Court in later years. A chronological record like this would help those who are concerned with the problem to steer ahead till we reach the proverbial end of the tunnel.

1. RESERVATION IN SELECTION POSTS VALID

GM, S. Railway vs Rangachari

This constitution bench judgement deals with reservation in promotion in public employment. Though this ruling prevailed supreme for several years, this has been overruled by the Mandal judgment in 1992.

Facts: The Railway Board declared reservation of selection posts in Class III of the railway service in favour of SC/ST. This was challenged by a Southern Railway employee in the Madras high court. The court restrained the railway from implementing the direction. Therefore, the railway appealed to the Supreme Court. The affected person argued that Articles 16, 335, 338 and 339 would show that the Constitution drew a clear distinction between SC/ST and other backward classes. He argued further that Article 16(4) applied only to reservation at the appointment stage and not at the selection stage. It was also contended that if the railway circular was implemented, he would be reverted to a lower post causing loss to him both financially and in status. The railway argued that Article 16(4) covered not only SC/ST but all backward communities.

Ruling: The Supreme Court reversed the high court decision. The railway circular was not ultra virus. Promotion was included in Article 16(1) and (2). High court judgements contrary to this ruling was disapproved of by the apex court.

The majority judgement stated that the initial appointment was only one of the matters relating to employment. The other matters are salary, periodical increments, terms as to leave, gratuity, pension and age of superannuation. All these are "matters relating to employment" stated in Article 16(1).

Equality promised in Article 16(1) should not be confused with absolute equality. What is guaranteed is the equality of opportunity and nothing more. Article 16(1) or (2) does not prohibit the prescription of reasonable rules for selection to any employment.

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1. AIR 1962 SC 36

Matters relating to employment include all matters in relation to employment both prior, and subsequent, to the employment which are incidental to the employment. The key clause of Article 16(4) unambiguously indicates that the word "posts" cannot mean ex cadre posts. The context requires that "posts" should be deemed to be posts inside services and not outside them. The condition of reservation is the satisfaction of the state that the backward classes are not adequately represented in the services. Reservation for selection posts is also discussed in AIR 1960 SC 384.

2. CASTE-BASED RESERVATION INVALID

M.R. Balaji vs State of Mysore

This is a case in which the reservation policy of the State of Mysore (Karnataka) was struck down by a constitution bench unanimously. In this significant judgement, reservation based only on caste was held unconstitutional.

Facts: A large number of candidates to professional colleges filed writ petitions in the Supreme Court alleging that but for the reservation made by the state government, they would have been admitted. On the other hand, students with less marks have been admitted. It was violative of Articles 15 (1) and 29 (2). The basis adopted for specifying backward classes was unintelligible and irrational. The extent of reservation was so unreasonable that it amounted to a fraud on the Constitution. The government disputed all these and said that its order was protected by Article 15 (4).

Ruling: The Supreme Court laid down several important points in this judgement. It held that it was not necessary for the government to appoint a commission under Article 340 before passing an order under Article 15 (4). The appointment and report of the commission was only recommendatory. It was not a condition precedent for taking action under Article 15 (4).

It was further ruled that the executive can pass orders on reservation. It is not necessary for the legislature to make provision for reservation.

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2. AIR 1963 SC 649

Article 15 (4) is a special provision, which was added to the Constitution in 1951. If an order is justified under Article 15 (4), its validity cannot be denied under Article 15 (1).

The backwardness must be social and educational. Caste is one indicator, but its role cannot be exaggerated. Otherwise, it would perpetuate caste. Social backwardness is the result of poverty to a large extent. Occupations and place of habitation also determine backwardness.

Classification between backward and more backward classes made by the government was held to be unconstitutional. According to this criterion, nearly 90 percent of the state population became backward. Reservation of 68 percent was also inconsistent with Article 15 (4) as it was unreasonable. The interests of the weaker sections must be balanced with those of society in general. It is a difficult task but in the guise of making special provision, practically all seats cannot be reserved. Reservation should be less than 50 percent.

The court concluded that the state government's order was a fraud on the constitutional power conferred under Article 15 (4).

The court said that it was not its task to categorise the valid and invalid classification. It cannot also lay down what is the valid percentage. Article 15 (4) gives that discretion to the state government.

3. EXCESSIVE 'CARRY FORWARD' RULE INVALID

T. Devadasan vs Union of India

If sufficient number of candidates for the reserved vacancies are not available, can the government carry forward those vacancies to the next year? The Supreme Court said 'no' in this leading judgement, but changed its view in later years.

Facts: Devadasan was an assistant in the Central Secretariat. An examination was conducted for promotion to section officer in which he scored high marks. But he could not get promotion because of reservation for SC/ST. Though the reserved vacancies

3. AIR 1964 SC 179

were only 17.7 percent a year, there was a 'carry forward' rule under which unfilled vacancies of the two previous years could be added to the present year. Applying that rule in the present year, 29 out of 45 seats went to SC/ST. That was 64 percent of the seats. The carry forward rule was therefore challenged as violative of the equality guaranteed in Article 14 and Article 16 (1) of the Constitution.

Ruling: The majority (4:1) on the constitution bench struck down the carry forward rule. The majority held that Article 14 envisaged equality among equals and not absolute equality. Article 16(4) provides for reservation for the backward classes who are not adequately represented in the services. But if the reservation was so excessive that it practically denied a reasonable opportunity to members of other communities, the latter have a valid complaint. Relying on AIR 1962 SC 36 and AIR 1963 SC 649, the judgement stated that while reserving seats for backward classes, the government should bear in mind the repercussions from year to year. What precise method should be adopted was a matter for the government to consider. But it must strike a reasonable balance between the claims of the backward classes and claims of other employees.

The court held that Article 16 (4) was a proviso or an exception to Article 16 (1). Therefore, a proviso cannot be interpreted to nullify or destroy the main provision. To hold that unlimited reservation could be made under Clause (4) would in effect efface the guarantee of equality in Clause (1) or at best make it illusory. No provision can be so construed as to destroy another provision in the Act, the majority judgement said. Reservation in excess of 50 percent would be unconstitutional.

However, Justice Subba Rao wrote a dissenting judgement in which he held that Article 16 (4) was independent of Article 16 (1). It grants unlimited power to the government in reservation. The only two conditions are that there must be backward citizens, and they are not adequately represented in the services. Just because too many posts go to reserved candidates is no reason to assail the carry forward rule, unless "unreasonably disproportionate" number goes to them.

It is inevitable that there would be some deterioration in the standard of service, but the provision cannot be held to be bad on that account, the dissenting judge said.

4. CASTE NOT SOLE FACTOR IN BACKWARDNESS

R. Chitralekha vs State of Mysore

This constitution bench judgement by majority (4:1) states that though caste could be one test of backwardness, it was not the vital consideration in Article 15 (4).

Facts: The appeal against the high court judgement reiterated that the government orders relating to admission to professional colleges were invalid on several counts. The definition of backwardness, which is relevant here, was challenged as it did not take into consideration the caste of the candidate. The two tests applied were income (less than Rs 1,200 a year) and occupation (like actual cultivators, artisans, manual labourers). The high court dismissed the argument. Hence the appeal.

Ruling: The Supreme Court dismissed the appeal. The judgement asserted that caste was only a relevant circumstance and it could not be a dominant test in ascertaining the backwardness of a class of citizens. Backwardness could be ascertained without reference to caste. If the government does not take caste into consideration, its order will not be bad in law on that account if other criteria have been taken into account.

Articles 46, 341, 342 and 15 (4) together make special provisions for the advancement of backward classes. Article 15 (4) speaks of classes, not castes. If the constitution-makers wanted to take castes also as units of social and educational backwardness, they would have said so as they have said in the case of SC/ST.

5. EXCLUSION OF NON-SC/ST CANDIDATES ILLEGAL

Abdul Latiff vs State of Bihar

The Patna high court rules that exclusion of those who do not belong to SC/ST for consideration in allotment of a shop was

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4. AIR 1964 SC 1823
5. AIR 1964 Patna 393

against Article 15 (1) of the Constitution. A special provision in favour of SC/ST cannot exclude the rest of society.

Facts: A 'ganja' shop in Ranchi was to be shifted. The Deputy Commissioner called for applications and 39 persons applied. Out of these, the excise authorities selected seven applications sent by SC/ST members. The petitioner's application was rejected as he was not a SC or ST. After the draw of lots, the shop went to a SC/ST applicant. This was challenged by the petitioner in the high court arguing that the selection violated Article 15 (1) of the Constitution, which barred any discrimination on the ground of caste or place of birth. It was contended that the effect of the government policy was not merely to give preference to SC/ST but to exclude candidates from all other communities in cases where there was a single candidate belonging to SC/ST. The government exceeded the constitutional limits of the power granted under Article 15 (4).

Ruling: The high court accepted the petitioner's argument and allowed the writ petition. It ruled that Article 15 (4) was not an independent or substantive enactment but was an exception or qualification of the main guarantee under Article 15 (1). The exception could not destroy the general rule.

The high court followed AIR 1963 SC 649 where the Supreme Court struck down excessive reservation in favour of SC/ST candidates in technical institutions.

6. CASTE NAME CONUNDRUMS IN ELECTIONS

B. Basavalingapppa vs D Munichinnappa

This is an election appeal in which the winning candidate's caste was challenged by the losing candidate. The constitution bench clarifies the position with regard to this caste in Karnataka.

Facts: In the election to Bangalore South (SC) Constituency, four persons contested. Munichinnappa won the highest number of votes and was declared elected. Basavalingappa filed an election petition challenging the election. The main ground was that Muni-

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6. AIR 1965 SC 1269

chinnappa was not an SC mentioned in the Constitution (SC) Order 1950. Munichinnappa claimed that he belonged to the SC listed as Bhovri in the order. His rival asserted that he was Voddar by caste, which caste was not listed in the order. Therefore, his election was based on a wrong declaration. The election tribunal found that he did not belong to the sub-caste Bhovri and was not eligible to stand in the reserved seat. His election was set aside. Therefore, the Munichinnappa appealed to the high court. The high court allowed his appeal. It held that Voddar caste as such was not included in the President's order of 1950, but Bhovri caste mentioned therein was no other than Voddar caste. Therefore, the losing candidate appealed to the Supreme Court.

Ruling: The Supreme Court dismissed the appeal. The constitution bench went into the history of the caste, caste names and different ways of spelling them. Before the states reorganisation of 1956, Voddar caste was the same as Bhovri caste, the court stated.

Normally, the President's order cannot be modified. Where one caste has another name, it is mentioned within brackets. But in this case, there was no caste called Bhovri at all in Mysore state. Therefore, there must have been some caste which the President intended to include in consultation with the state when it included Bhovri in the order. Therefore, the court has to find it out.

In 1944, the Voddar caste passed a resolution that their caste name be changed to Boji. The government accepted the resolution in 1946. Since then, all government records showed Voddar as Boji. Therefore, it was reasonable to infer that Voddar was in fact Bhovri. It is true that the order mentions only Bhovri and not Boji. It is also true that where there are two spellings, the order provides for it. But the President could not have included a non-existent caste in the order. Therefore, it must be Bhovri. In the peculiar circumstances of this case, the difference in spellings was of no importance, according to the judgement.

7. CONTESTING POLLS ON WRONG CASTE CARD

Bhaiya Lal vs Harikishen Singh

In this case, a candidate in the reserved constituency declared his caste wrongly to contest polls. The rival candidate filed a petition and got his election set aside.

Facts: Bhaiya Lal, Harikishan Singh and three others contested from a reserved constituency in M.P. Bhaiya Lal was declared elected. Harikishan came second. He challenged the validity of Lal's election on the ground that he belonged to the Dohar caste and not a Chamar as declared by him. Dohar was not recognised as SC in the district and therefore he was not entitled to stand for election from that seat. The election tribunal heard oral evidence and set aside the election of Bhaiya Lal as he wrongly declared his caste as Chamar. On appeal, the high court confirmed the finding. Therefore, he appealed to the Supreme Court.

Ruling: A constitution bench of the Supreme Court upheld the concurrent view of the high court and the election tribunal. The caste of a candidate is a question of fact and the Supreme Court usually does not interfere in the concurrent finding of two courts below. It rejected the argument that Dohar caste was a sub-caste of Chamar. The Constitution (SC) Order 1950 issued by the President under Article 341(1) of the Constitution would prevail. The order lists the SCs in a state, and Dohar was not one in M.P. The court cannot investigate whether Dohar is a sub-caste of Chamar in view of Article 341. A similar question arose in AIR 1965 SC 1269 and it was held that it was not open to the court to modify the Presidents' order by looking into further evidence. Before the President's notification, an elaborate enquiry is made and it is as a result of this enquiry that social justice is sought to be done to the castes, races or tribes as necessary. Educational and social backwardness in regard to these castes may not be uniform or of the same intensity in the whole of the state. It may vary in degree or in kind in different areas and that may justify the division of the state into convenient and suitable areas, the judgement clarified.

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7. AIR 1965 SC 1557

8. CRITERION FOR INCLUSION IN BACKWARD CLASSES

Triloki Nath Tiku vs State of J & K

The constitution bench rules in this judgement that the reserved class must be backward and not adequately represented in the services under the State. Both conditions must be met.

Facts: Two school teachers moved the Supreme Court seeking to quash the promotion of over 80 others who were entitled to reservation according to the state government policy. In promoting teachers, the government followed the following policy: (1) 50 percent for Muslims, (2) 60 percent of the remaining posts to Hindus from Jammu, majority of whom are Dogras, (3) the remaining 40 percent of the 50 percent are given to Kashmiri Pandits. One or two posts are given to Sikhs out of turn. It was argued that the basis was not declared in any order. It was also alleged that promotions are not made on the basis of merit or seniority but purely on the ground of religion, caste and place of birth. The petitioners contended that they were seniors but they were superseded by 86 others because they were Kashmiri Pandits and the others were Muslims or Jammu Hindus. The government maintained that the Muslims and Jammu Hindus were backward classes and reservation was done to gradually reduce the imbalance between the backward classes and the progressive ones.

Ruling: The court noted that the government had not placed on record any order specifying the backward classes or the criteria for backwardness for fixing a proportion between backward classes and others in the matter of promotion. There were no census figures to analyse the social situation of the different communities. The government statement was a bald assertion unsupported by any acceptable data. Therefore, the Supreme Court directed the high court either directly or through a district court to gather the necessary data to identify the backward classes. The report shall be submitted to the Supreme Court in two months.

The Supreme Court rejected the argument of the government that under Article 16 (4), 'backward classes' are those not ade-

8. AIR 1967 SC 1283

quately represented in public services. If that stand was accepted, however advanced a class may be educationally and socially, if it was not represented adequately in the services, it was a backward class. This theory would exclude the really backward classes from the benefit of reservation. Therefore, the court asserted two conditions for valid reservation: (1) the class of citizens must be socially and educationally backward and (2) it is not adequately represented in the services.

The report was submitted according to the order and the constitution bench considered it. It was found that the scheme of distribution of posts was community wise. It was contrary to Article 16(1) and (2) and not saved by Article 16(4). The promotions were held void. The judgement added: "This will not prevent the state from devising a scheme consistent with the constitutional guarantees for reservation of appointments, posts or promotions in favour of any backward class of citizens which in the opinion of the state is not adequately represented in the services under the state."

9. BACKWARD LIST BASED ON CASTE INVALID

Desu Rayudu vs Andhra Pradesh PSC

The Andhra Pradesh high court upholds the state decision to cancel a backward class list based solely on caste.

Facts: The petitioners wanted to contest in the competitive examinations to the state services on the basis of their inclusion in the backward class list. But before the examinations, the list in vogue was cancelled and a new list was published under which they were not eligible for the reservation. Therefore, they challenged the new government order as illegal. It was argued that under Articles 15 (4) and 16(4) of the Constitution, the criteria for determining backwardness could only be caste as the term 'backward classes' was confined to the Hindu castes which were socially and educationally backward. While the earlier list was based on caste, the later one did not follow that test. The Governor's competence to issue the latter order was also challenged.

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9. AIR 1967 A.P. 353

Ruling: The high court dismissed the petition. The term 'backward classes' in Article 16(4) could not be decided exclusively on the basis of caste. The high court followed the Supreme Court judgement in AIR 1962 SC 36 and AIR 1964 SC 179. Two conditions are necessary to invoke Article 16 (4). Firstly, there must be a backward class of citizens and secondly that class, in the opinion of the state, was not adequately represented in the services of the state. Excessive reservation would also be bad in law, as it would be derogatory to the main clause in Article 16. On the same analogy, under Article 16 (4) caste could be one of the several factors for determining the backwardness, but it could not be the sole or predominant basis. The earlier list was exclusively based on caste and hence was bad both under Article 15 (4) and Article 16 (4). The state government was perfectly justified in cancelling it.

The judgement also stated that the Governor could make rules regulating recruitment and conditions of service until the legislature made such provisions. It was also held that under Articles 340, 15 and 16, the President could not issue instructions to states which would have a binding force. The memorandum of the backward classes commission was not binding on the states. It could not have greater validity than the Supreme Court rulings which had stated that backward class lists based on caste was bad.

10. CLASSIFICATION FOR PROMOTION VALID

C.A. Rajendran vs Union of India

This constitution bench judgement deals with classification of staff and reservation of posts only in certain classes. The classification was upheld.

Facts: The petitioner moved the Supreme Court challenging the government memorandum under which there was no reservation for SC/ST in classes I and II services. In Classes III and IV, appointments by promotion were given to SC/ST. This was challenged as violative of Article 16 (4) of the Constitution as it

10. AIR 1968 SC 507

discriminated by making provision for reservation in certain types of classes III and IV only and not in classes II and I. It was also argued that Article 16 (4) was not an exception to Article 16 but was in itself a fundamental right granted to SC/ST and backward classes. The prayer was to strike down the scheme.

Ruling: The petition was dismissed holding that the government can make reasonable classification of employees for purposes of appointment and promotion. Articles 14, 15 and 16 form part of the same constitutional code of guarantees and supplement each other. Article 16 gives effect to the doctrine of equality. It follows that there can be a reasonable classification of employees for appointment and promotion. The equality of opportunity in Article 16(1) means equality as between members of the same class of employees, and not equality between members of separate, independent classes.

It is well-settled that Clause (4) of Article 16 is an exception clause and is not an independent provision and it has to be strictly construed. Article 16 (4) should be interpreted in the context of Article 335. In other words, in making a provision for reservation the government has to consider not only the claims of the members of the backward classes but also the maintenance of efficiency of administration which is a matter of paramount importance.

The court agreed with the government that in class I and II posts a higher degree of efficiency and responsibility was required and therefore reservation was considered harmful to those classes.

11. BACKWARD CASTE COULD BE A CLASS

P. Rajendran vs State of Madras

This constitution bench decision deals with the terms class and caste. It rules that a caste could be a class in certain circumstances.

Facts: Three candidates for the coveted medical college seats challenged the order of the state government on several grounds. One of the challenges was to Rule 5, which provided for reservation for "socially and educationally backward classes" and laid

11. AIR 1968 SC 1012

down that for that purpose a Group III list would be followed. It was argued that this was nothing but a list of certain castes. Therefore, reservation in favour of certain castes based only on caste considerations violated Article 15(1) of the Constitution.

Ruling: The Supreme Court rejected this argument. It stated that if the reservation had been based only on caste and had not taken into account the social and educational backwardness of the caste in question, it would be violative of Article 15 (1). But it must not be forgotten that a caste is also a class of citizens and if the caste as a whole is socially and educationally backward, reservation can be made in favour of such a caste on the ground that it is socially and educationally backward class of citizens within the meaning of Article 15 (4).

In this case, the list of backward classes has been specified by caste. But that does not necessarily mean that caste was the sole consideration and that persons belonging to these castes are also not a class of backward citizens. The state government showed the history of the backward class list starting from 1906. The main test was backwardness of the caste based on occupation. As the members of the whole caste were found to be backward, they were put in the list. The list was occasionally amended and updated. Therefore, it must be accepted that though the list showed certain castes, the members of those castes were really classes of backward citizens.

12. CASTE-BASED LIST STRUCK DOWN

State of A.P. vs P. Sagar

A list of backward classes based only on caste is violative of Article 15 of the Constitution, says this judgement.

Facts: The Andhra Pradesh government reserved medical seats in the various colleges on several criteria, like SC/ST, children of ex-servicemen and displaced goldsmiths and women. Twenty per cent of the seats were reserved for backward classes in Andhra and Telegana areas. The reservations were challenged on several grounds in the high court. It dismissed most of them but it ruled

12. AIR 1968 SC 1379

that reservation for backward classes were invalid. Therefore, the state government appealed to the Supreme Court. The state government submitted that a lot of thought was given to the preparation of the list of backward classes and pointed out the meetings conducted by committees appointed to go into the question.

Ruling: The Supreme Court dismissed the government's appeal and upheld the high court judgement quashing the backward classes list.

The Supreme Court stressed that Article 15 (1) guaranteed a fundamental right of far-reaching importance. Within certain defined limits an exception has been engrafted upon Clause (1), but being an exception, the conditions which justify departure must be strictly shown to exist. A mere assertion by the government that it had acted in good faith in listing the backward classes would not be sufficient under Article 15 (4). When a question arises whether a law which prima facie infringes a guaranteed right is valid, the court must decide it on material placed before it. A mere assertion by the government that the rule was made after full consideration of the relevant evidence and was within the scope of Article 15 (4) would not be sufficient, the judgement said.

The high court had repeatedly observed that no material at all were placed before it to enable it decide whether the criteria laid down by the Supreme Court were followed.

In this case, reservation was made in favour of castes, and not classes. Therefore, it infringed Article 15 (1). The criterion for determining backwardness must not be based solely on religion, race, caste, sex or place of birth. The backwardness being social and educational, must be similar to the backwardness from which SC/ST suffer.

13. RESERVATION IN JUDICIAL SERVICE UPHELD

V. Hariharan Pillai vs State of Kerala

The Kerala high court upholds the reservation made under Article 309 of the Constitution to the state judicial service.

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13. AIR 1968 Kerala 42

Facts: Though certain candidates were placed high in rank for recruitment to the Kerala Judicial Service, they lost their chance due to reservation for a number of communities. Therefore, they challenged the selection in a writ petition. They argued that equality in public employment guaranteed in Article 16 (1) was infringed, as also Article 16 (2) which bars discrimination on the ground only of caste, descent or place of birth.

Ruling: The Kerala high court by majority dismissed the petition, stating that the reservation was within Article 16. The extension of reservation to judicial service with retrospective effect was valid in view of Article 309. It was valid as it was not based exclusively on caste or religion. The members of the castes and sects mentioned in the government rules were backward, socially and educationally. The state government had further applied its mind to the problem and found that those classes were not adequately represented in the services. Articles 15 (4) and 16 (4) enabled preferential treatment in favour of 'weaker sections'. Since the Constitution is secular, the classification cannot be made only on the basis of caste or religion. Quoting AIR 1964 SC 1823, the high court stressed that only where by and large the entire members of a community belong to backward class that a classification could be made by listing them on the basis of caste.

The court also advised the state government to undertake a detailed study of backward classes for a fresh appraisal of the questions involved.

14. PRESIDENT'S ORDER DETERMINES CASTE

Parasram vs Shivchand

This is an election case in which the caste name was in dispute. The Supreme Court applied the principles laid down by it in AIR 1965 SC 1269 and AIR 1965 SC 1557.

Facts: One of the unsuccessful candidates in an Assembly Constituency (reserved) of Punjab contested the election because according to him, the nomination papers of one person was wrongly rejected. Kishan Lal, whose nomination paper was rejected, was a

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14. AIR 1969 SC 597

Hindu and a Chamar and he belonged to SC, according to the petition. However, there was objection to the declaration of his caste and therefore, the election officer rejected the nomination. It was found that Kishan Lal was not a Chamar but a *Mochi*, which is not listed as SC. It was argued that Chamar and *Mochi* were the same caste. *Mochi* was applied to a Chamar who actually started working in leather. Therefore, it was argued that the nomination paper was wrongly rejected. The high court dismissed the petition. Hence the appeal.

Ruling: The Supreme Court also dismissed the appeal. It said that it would not be of any use to look into the gazetteers and glossaries on the Punjab castes and tribes to find out whether *Mochi* and Chamar meant the same caste in certain parts of the state. Perhaps there was some difference in the professions, the main one being that Chamars skin dead animals while mochis do not. In any case, the question cannot be decided by evidence. It is determined exclusively by the President in his 1950 Order. The court cannot go into it. Therefore, the nomination was properly rejected because Kishan Lal was found to be a Mochi and not a Chamar.

15. HABITUAL OCCUPATION DETERMINES CLASS

B. Subhas Chandra Shetty vs State of Mysore

In determining the backwardness of a citizen, his habitual or traditional occupation is an indicator, but not his casual or temporary one, says this judgement of the Mysore high court.

Facts: In this case, the petitioner's father was a school teacher in a government school. After retirement, he took to agriculture. When his son sought admission in the state medical college in the reserved quota, the youth claimed that his father was in the backward class as he was an agriculturist and his income was below Rs 1,200, which was the economic criterion set for reservation. Therefore, on both economic and backwardness test, he claimed reservation. But the authorities rejected his claim saying that retired school teachers do not come under any backward class and that the father's share in the Hindu undivided family exceeded the

15. AIR 1969 Mysore 48

prescribed Rs 1,200. Therefore, the son moved a writ petition in the high court.

Ruling: The government had listed certain occupations as contributing to social backwardness:- actual cultivator, artisan, petty businessman, inferior service and occupations involving manual labour. The court said that the occupations contemplated by the government order were not casual or temporary occupations, but the habitual occupations of families. Otherwise a person may claim to be treated as backward in one year and forward in another as it suited to his advantage. Any other interpretation would also result in one member of a family being classed as belonging to the backward class while another not.

Regarding income, the government order treated the family as one unit for purposes of classification. Therefore, what has to be seen is whether a particular family to which the candidate belonged was backward. When the family is considered as a unit for classification, one member cannot be treated different from the other. Moreover, it was not disputed that the annual income of the family exceeded Rs 1,200. Though technically the income of the undivided family was not the income of its individual members, the social status of a member of a joint Hindu family had relation to the wealth and income of the undivided family.

After retirement, it could not be said that the retired teacher became socially and educationally backward [Article 16(4)], merely because he chose one of the occupations specified in the government order. It is common knowledge that even after retirement, a school teacher is held in the same esteem in society as before he retired. He could not be regarded as belonging to backward classes merely because he took to agriculture after retirement. The petition was thus dismissed.

16. SC/ST STATUS ONLY WITHIN STATE

K. Appa Rao vs Director of P & T

This judgement of the Orissa high court emphasises that the SC/ST list in one state is valid only within that state. Those in

16. AIR 1969 Orissa 220

other states cannot claim the benefit even if they are in central government services.

Facts: The petitioner was a resident of Orissa belonging to Konda Kapu (ST). He was promoted on the basis that he belonged to ST. Later he was reverted on the ground that Konda Kapu was not recognised as ST in Orissa where he was a permanent resident. He challenged his reversion in a writ petition. He argued that Konda Kapu was recognised as ST in Andhra Pradesh under the Constitution (ST) Order 1950. Since he belonged to the central services he must be considered as ST wherever he was residing or posted. It was pointed out that Section 2 of the Public Employment (Requirement as to Residence) Act provided that all requirement as to residence in a state or Union Territory shall cease to have any effect. Therefore, residence in a particular area or state would not be a bar to public employment under the central government and the statewise classification for employment should not be recognised. Therefore, it was enough to show that he belonged to SC/ST, and not to a particular state.

Ruling: The Orissa high court dismissed the contention, basing its reasoning on Articles 341(1) and 342(1) of the Constitution. These Articles state that the President shall notify the list of SC/ST "in relation to that state." These words are not without significance. It showed that in order to get the benefit of being a member of the SC/ST in the matter of public employment, the person should be a member of such caste or tribe in relation to the particular area or state where he was residing and where he sought employment. The Public Employment Act could not override the provisions of the Constitution. The Constitution (ST) Order 1950 provides that the tribes specified in Part I to XII of the schedule to that order shall "in relation to that state" to which those parts respectively relate, be deemed to be the ST, so far as regards members residing there. It is therefore clear that the particular ST are recognised only for that particular area. This view is reinforced by the Supreme Court judgement in AIR 1965 SC 1557. Educational and social backwardness in regard to castes and tribes may not be uniform or of the same intensity in the whole state; it may vary in degree or kind in different areas and that may justify the division

of the state into convenient and suitable areas for issuing the notification. In the present case, Konda Kappu is mentioned in the 1950 Order in relation to AP, but not Orissa. The petitioner while residing in Orissa, cannot, therefore claim the benefit of reservation, the court said.

17. ELECTION PETITION OVER TRIBAL NAME

Bhaiya Ram Munda vs Amirudh Patar

This is an election dispute from Bihar over the tribal name of the winning candidate. The Supreme Court examines a mass of evidence and previous rulings in the context of Article 342 and the ST Order of 1950.

Facts: Patar was elected from the Tamar Assembly constituency reserved for ST. Munda was defeated. He filed an election petition in the Patna high court challenging Patar's election as he was not ST and was therefore disqualified to stand for election under the Representation of the People Act. The high court dismissed the petition holding that Patar was a member of the ST called 'Munda' which was specified in the 1950 Order. Hence the appeal to the Supreme Court.

Ruling: The appeal was dismissed. Both arguments in the appeal were rejected. It was argued that (1) Patars are not 'Mundas' and (2) Patars are not included in the 1950 Order in relation to Bihar. Considerable evidence was produced, e.g. a sale deed in which Patar did not claim to be ST, entries in the revenue records and oral evidence of witnesses.

The Supreme Court stated that whether a particular person was a member of ST under the 1950 Order was essentially a question of law. Though an admission made by him expressly or by implication that he was not ST was evidence against him in an election petition, the evidence was not conclusive. Even if the candidate had violated Section 46 of the Chotanagpur Tenancy Act (in the sale deed) he would not on that account be disentitled to claim the status of ST. The transaction of sale may be void, but it could not be said, on that ground alone, that he was not ST.

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17. AIR 1971 SC 2533

The court further held that the name by which a tribe or sub-tribe was known was not decisive. Even if the tribe of a person was different from the name included in the 1950 Order it may be shown that the name included in the order was a general name applicable to sub-tribes.

18. BID TO CIRCUMVENT SC RULING STOPPED

Makhan Lal vs State of J & K

This constitution bench judgement of five judges illustrates how an attempt to circumvent the law declared by the Supreme Court in *Triloki Nath* vs *State of J & K* (AIR 1969 SC 1) was made by the state government. The court prevented the government from succeeding.

Facts: In the Triloki Nath case, the Supreme Court struck down as violative of Article 16 of the Constitution the state policy of reserving 50 percent of the vacancies among teachers in government schools in favour of Muslims of Kashmir. The rest was also reserved for different communities. Several petitions were moved in the Supreme Court against this. The policy was struck down as violative of Article 16 (1) and (2) and the promotions made were held void. It was left open to the government to devise a scheme consistent with the Constitution. But no such scheme was devised. On the other hand, the government thought of an "ingenious device of giving ostensible effect to the decision of the Supreme Court." Those teachers, whose promotions had become illegal due to the previous case, were allowed to work at the same posts on a temporary basis. This was the common pattern all over the state.

A new name was invented to cover up the strategy. Head masters were called Teachers-in-charge. They were to get the same salary they were getting before. Thus a number of junior teachers were put above their seniors only on account of their community. Moreover, those teachers who were not parties in the earlier case were promoted against the Supreme Court ruling. The state tried to justify it by saying that they were not parties in the earlier case, and therefore were not covered by the ruling. It was also argued that merit was taken into consideration for their promotion.

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18. AIR 1971 SC 2206

Ruling: The Supreme Court rejected the government's contention and reversed its promotions. The judgement clarified that the earlier decision not only struck down scores of promotions, but also laid down clearly that the distribution of appointments, posts and promotions on the basis of communal policy was contrary to the Constitution. The law so declared was binding on the government in all instances, whether the teachers were parties to that case or not. The court quoted instances where Kashmiri Muslims who were juniors were promoted and posted above Kashmiri Pandits in spite of the earlier decision because of the government's policy to avoid the impact of the court ruling. The court also observed that it was abundantly clear that the promotions of those who were not parties in the earlier case were based not merely on the basis of merit but on communal criterion, which had been struck down.

19. RESERVATION SHOULD BE REVIEWED PERIODICALLY

A. Periakaruppan vs State of Tamil Nadu

The dispute in this case arose out of reservation for medical seats in Tamil Nadu under various heads, including 'backward classes.'

Facts: Two candidates challenged the selection system which apart from unitwise distribution of seats and objective tests, included reservation for backward classes. The judgement dealt with the various aspects and held that the selection was not valid. It appointed an expert committee to solve the immediate problem. What is significant for the present purpose is the observations on reservation for backward classes which was one aspect of the litigation.

Ruling: The court observed: There is no basis for the contention that the reservation made for backward classes is excessive. The court is not told why it is excessive. Undoubtedly we should not forget that it is against the immediate interest of the nation to exclude qualified and competent students but then the immediate advantages of the nation have to be harmonised with its long-

19. AIR 1971 SC 2303

range interests. It cannot be denied that unaided, many sections of the people in this country cannot compete with advanced sections of the nation. Advantages secured due to historic reasons should not be considered as fundamental rights. Nation's interest will be best served--taking a long-range view--if the backward classes are helped to march forward and take their place in tune with the advanced sections of the people.

The judgement then analysed the earlier Supreme Court rulings on caste and class. It concluded the discussion on 'backward classes' thus: All the same the government should not proceed on the basis that once a class is considered as a backward class it should continue to be backward class for all times. Such an approach would defeat the very purpose of reservation because once a class reaches a stage of progress ("take-off stage") then competition is necessary for their future progress. The government should always keep under review the question of reservation and only the classes which are really socially and educationally backward should be allowed to have the benefit of reservation. Reservation of seats should not be allowed to become a vested interest. The fact that the backward classes candidates have secured 50 percent of the general pool seats does show that the time has come for a de novo comprehensive examination of the question. It must be remembered that the government's decision in this regard is open to judicial review.

20. SC/ST's 'LEAP' OVER OTHERS JUSTIFIED

State of Punjab vs Hira Lal

This judgement follows the earlier leading decision in Rangachari's case, under different circumstances. It reaffirms the view that reservation under Article 16(4) can be made not merely at the initial recruitment but also to posts to which promotions are to be made.

Facts: The Haryana Government issued an order in 1963 in which it said that reservation for SC/ST/backward classes was applicable only to new appointments, but not to promotions, which will be governed by merit and seniority alone. In 1964, two clarifications were made to the order which granted reservation to SC/ST/

20. AIR 1971 SC 1777

backward classes in promotions also. Hira Lal and a SC member were both head assistants in the Forest Department. Though Hira Lal was senior, the SC member was promoted to Superintendent's post due to the reservation rule. So Hira Lal moved the high court against the reservation. The court quashed the promotion. Therefore, the state appealed to the Supreme Court.

Ruling: The Supreme Court struck down the high court ruling and upheld the reservation. The Supreme Court observed that the high court was swayed by the hypothetical cases under which reservation could lead to various anomalies such as the SC member leaping over several seniors. A head assistant could thus end up as deputy secretary. But the high court had not shown that such possibilities were imminent or even likely.

The equality guaranteed in public employment under Article 16(1) is subject to several exceptions. Article 16(4) authorised the state to provide for reservation in promotion also. The extent of reservation to be made is primarily a matter for the state to decide. But its decision is subject to review. The reservation must be only to give adequate representation to the SC/ST/backward classes in the services. The exception provided in Article 16(4) should not make the rule in Article 16(1) meaningless. The mere fact that the reservation made may give extensive benefits to some persons does not by itself make reservation bad. "The length of the leap to be provided depends upon the gap to be covered."

It is an inevitable consequence of any reservation of posts that junior officers are allowed to take a march over their seniors. This is bound to displease the seniors. Some of them also may get frustrated. But the Constitution-makers have given the protection to the backward classes in the interests of society, the judgement stressed.

21. TESTS TO DETERMINE BACKWARDNESS

State of A.P. vs U.S.V. Balaram

In this judgement, the Supreme Court discusses the test for determining the backwardness of a caste. The backwardness must be comparable to those of SC/ST, but need not be exactly similar.

21. AIR 1972 SC 1375

Facts: This was an appeal against the judgement of the A.P. high court. There were many issues involved in the case arising from disputes over admission to medical colleges. Determination of backward classes was one of them. The state government had appointed a backward classes commission to identify the communities which could be called backward classes for the purposes of reservation. Following the rules laid down by the Supreme Court, this commission enumerated the communities, after giving reasons. When the admissions were challenged in writ petitions, the high court struck down the reservation. The high court held that the government order in this regard violated Article 15(1) of the Constitution read with Articles 29 and Article 15(4) did not protect its action. The high court stated that proper investigation and collection of data had not been done by the commission.

Ruling: The Supreme Court held that the high court view in this matter was wrong. It stated that factually the classes enumerated as backward classes were really socially and educationally backward on the application of the principles laid down by the apex court in AIR 1963 SC 649, AIR 1964 SC 1823 and AIR 1968 SC 1379. The social and educational backwardness need not be exactly similar in all aspects to that of SC/ST. If an entire caste was found to be socially and educationally backward, their inclusion in the list of backward classes by their caste name was not violative of Article 15(4). A caste was also a class of citizens and a caste as such may be socially and educationally backward. If a caste was found to be so, reservation for such group was valid notwithstanding the fact that a few individuals in that group may be above the general average.

The Supreme Court rejected the criticism that the commission had used its personal knowledge for characterising a particular group as backward. If the personal impressions gathered by the members of the commission had also been utilised to add to its data, it could not be said that its report was vitiated by that factor.

22. MARRIAGE WITH TRIBAL GRANTS ST STATUS

N.E. Horo vs Smt. Jahan Ara

Though this case raised questions of corruption in an election petition, one important argument was regarding the status of a non-tribal marrying a tribal. The Supreme Court held that in this particular case, the customary marriage gave the status of a tribal to the non-tribal wife.

Facts: In the by-election to Khunti (ST) parliamentary constituency in Bihar, Jahan Ara filed nomination papers. She stated that she was the widow of a member of the Munda ST. Another candidate objected to her claim, stating that she was a non-tribal. Her nomination was rejected. After Horo was elected, she filed an election petition alleging that her nomination was wrongly rejected. According to her, when a Munda male married outside his tribe and his marriage was accepted by the tribe, he continued to be in his tribe and his wife also acquired its membership. She stated that she was Tamil by birth. She married her tribal husband according to the Munda custom, in the presence of the tribal elders. It was argued that the returning officer's stand that the membership of Munda tribe could be got only by birth was wrong. Therefore, her nomination papers were wrongly rejected, it was argued. The Patna high court held that her nomination papers were wrongly rejected and the election was quashed. Therefore, the elected candidate appealed to the Supreme Court.

Ruling: The Supreme Court dismissed the appeal. The court got expert evidence from anthropologists on the tribal customs. It was shown that once the marriage of a Munda male with a non-Munda female was approved by the tribal panchayat, they became members of the community. Therefore, the election was not valid.

23. CRITERIA FOR DETERMINING BACKWARDNESS

Janki Prasad vs State of J & K

This five-judge constitution bench judgement deals with communal reservations in Jammu and Kashmir. Two earlier decisions

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23. AIR 1973 SC 930
22. AIR 1972 SC 1840

did not end the controversy, and therefore the Supreme Court delivers a comprehensive judgement in this case.

Facts: Two earlier cases [Triloki Nath (8) and Makhanlal(18)] had struck down the teachers' promotions based on communal criterion. The state government therefore reverted all ineligible teachers to their earlier posts. All of those who were eligible for promotion were asked to appear for interview before a promotion committee. The educational expert who assisted the committee had suggested that candidates should get at least 50 percent marks for selection. But the committee fixed 30 per cent as the optimum score. Since very few qualified even then, the qualifying mark was reduced to 20 percent. Further, at the time of interview, the selection committee did not have before it either the character rolls, the service records or the confidential reports of the teachers. Even after the interview, teachers belonging to different communities were selected in the same proportion as they were before.

Ruling: The Supreme Court set aside the selections made by the promotions committee. It pointed out various defects in the rules and stated that until they were cured they would not be given effect to. The court said: "It is unfortunate that this controversy is going on from 1965. The net result has been to deprive schools of their headmasters. There can be no doubt that considerable damage must have been done to overall discipline in schools."

The court observed that it could not be a coincidence that the same number of Muslims and Hindus could have been selected. Such a selection could not be called a selection at all.

According to the ruling, the expression "backward classes of citizens" in Article 16(4) means the same thing as "any socially and educationally backward class of citizens" in Article 15(4). It is not merely educational backwardness or social backwardness which makes a class backward. The class must be both 'educationally' and 'socially' backward. Poverty is not the only test.

Though the two words are cumulatively used, one may find that if a class is educationally advanced, it is generally also socially advanced because of the reformative effect of education on that class. The words 'advanced' and 'backward' are only relative terms.

In identifying backward classes, one has to guard oneself against including sections which are socially and educationally advanced because the whole object of reservation would otherwise be frustrated. It must also be remembered that in appointments and promotions to responsible public offices, greater circumspection would be required because efficiency and public interest must always remain paramount.

24. 'CARRY FORWARD' RULE NOT UNCONSTITUTIONAL

A.R. Choudhary vs Union of India

This Supreme Court judgement states that reservation for backward communities should not be excessive and that an unfilled reserved vacancy could be carried forward to the next year.

Facts: The petitioner was a teacher employed the South-Eastern Railway. The dispute was over the promotion to the headmistress's post of the Kharagpur school. The Railway Board had prepared a roster by which 17.5 percent vacancies were reserved for SC/ST. It was also decided that if there was only a single vacancy, it should be treated as unreserved. If on account of this arrangement, a reserved vacancy was treated as unreserved, the reservation will be carried forward to the subsequent two years. The petitioner lost her chance under this rule, because a SC teacher got the post. Therefore, she moved the Supreme Court challenging the validity and interpretation of the 'carry forward' rule. A number of orders were passed by the Calcutta high court in their petitions which are not relevant to the main questions discussed in the judgement.

Ruling: The petition was dismissed, following the rulings in AIR 1963 SC 649 and AIR 1964 SC 179. The court held that reservation for a backward community should not be so excessive as to create a monopoly or unduly disturb the legitimate claims of other communities. Following the above two judgements, the government had modified the 'carry forward' rule to fall within the Supreme Court rulings. The Railway Board prepared a model

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24. AIR 1974 SC 532

roster on that basis. It was further clarified that "if there be only one post to be filled, selection should invariably be held for two posts i.e. one actual and the other to cover unforeseen circumstances." In this case, a SC teacher was promoted in the carry forward quota, which was challenged. The Supreme Court dismissed the challenge, ruling that reservation could be carried forward to the next year and it would be available then even if there was only a single vacancy.

25. QUALIFYING MARKS NOT ESSENTIAL

G.K. Gupta vs Union of India

The Allahabad high court holds that reservation for SC/ST in selection to the prestigious Indian Institute of Technology based on lower qualifying marks was valid.

Facts: This writ petition was filed seeking a direction to the government to cancel the admission to SC/ST students who had not secured the qualifying marks at the joint entrance examination for entry to the Kanpur IIT. The petitioner, who did not get admission, also sought a seat by eliminating the candidates who got admission through reservation.

Ruling: The high court dismissed the petition and held that reservation for SC/ST was within the scope of Article 15 of the Constitution. It said that the allegations in the petition were vague. It was not stated who were the SC/ST candidates who were selected though they had not secured the qualifying marks. Nor was there any assertion as to the qualifying marks. The allegation that those who got only 10 percent marks were admitted was vague. The petitioner made two further arguments. Firstly, that the reservation was not protected by Article 15 and secondly, admission could be controlled only by an ordinance framed under Section 28 of the Institutes of Technology Act and not by any executive direction issued by the government. Answering the second point, the high court said that no ordinance had been framed, nor was there any administrative or executive order. Therefore, there was no violation of the Act.

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25. AIR 1974 Allahabad 288

Regarding Article 15, the court stated that the reservation was saved by clause (4) of Article 15. Clause (4) makes the equality provision of Article 15(1) inapplicable if the state makes special provision for the advancement of socially and educationally backward classes of citizens or members of SC/ST. The government by making special provision for admission of SC/ST to technical institutions must be held to have done so for securing their advancement. Such a step would not be hit by Article 15(1) or Article 29(2) but would be within the scope of Article 15(4). The purpose of reservation in this case is to make seats available to SC/ST as they cannot be available to them without reservation. Once reservation has been made, the method of filling up of reserved seats may be different from the one adopted for filling up unreserved seats. The qualifying marks for this class may also be different or there may be no qualifying marks at all, the high court ruled.

The court rejected the argument that the quality of engineers would be affected by the low qualifying marks for SC/ST. It said that the concession was granted only at the stage of admission. No concession is being granted in passing the final examination. Unless they qualify themselves through the education given to them at the institute they would not pass and the country would not get engineers who are not fully qualified.

26. RESERVATION FOR RURAL AREAS STRUCK DOWN

State of U.P. vs Pradip Tandon

This ruling says that rural areas as a whole cannot be called a backward class for reservation in medical colleges. But hill districts like Uttrakhand can be given benefit of reservation under Article 15(4) of the Constitution.

Facts: The UP Government framed rules for admissions to medical colleges under which reservation was made for rural areas (117 seats), hill areas (25) and Uttrakhand area (25). The total seats available were 782. So 392 seats were in the general category, after deducting reserved seats for SC/ST and some others. The reservation for rural, hill and Uttrakhand areas were challenged in

26. AIR 1975 SC 563

the high court, which upheld it. Hence the appeal to the Supreme Court.

Ruling: The court held that reservation for candidates from rural areas was unconstitutional but reservation for those from hill and Uttrakhand regions was valid. The hill and Uttrkhand areas in the state are instances of socially and educationally backward classes of citizens. Backwardness is judged by economic criteria like population, standard of living and fixed property. From an economic viewpoint the classes of citizens are backward when they do not make effective use of resources. When large areas of land maintain sparse, disorderly and illiterate population whose property is negligible, the element of social backwardness is observed, the judgement explained.

When effective territorial specialisation is not possible in the absence of means of communication and technical processes as in the hill and Uttrakhand areas, the people are socially backward classes of citizens. Neglected opportunities and people in remote places raise walls of social backwardness.

Educational backwardness is ascertained with reference to these factors. The hill and Uttrakhand areas are inaccessible. There is lack of educational institutions. People in these areas illustrate the educationally backward classes because lack of educational facilities keep them stagnant.

On the other hand, reservation for rural areas cannot be sustained on the ground that those areas represent backward classes. In UP, 80 percent of population in rural areas are not a homogeneous class. Poverty in the rural areas cannot be the basis of classification to support reservation for rural areas. Poverty is found in all parts of India.

Moreover, reservation on the bass of place of birth is violative of Article 15 of the Constitution. Incident of birth in rural areas cannot be the basis of reservation. The burden of proof is on the government to establish that the reservation is for backward classes. It has established that in the case of hill and Uttrakhand areas, but not in the case of rural areas.

27. RELAXED RULES FOR PROMOTION UPHELD

State of Kerala vs. N.M. Thomas

This is a landmark judgement upholding reservation for promotion to backward classes in government service. The seven judges were split on some points and the majority view prevailed.

Facts: The bone of contention was Rule 13AA of the Kerala State and Subordinate Services Rules 1958. According to it, the government could, notwithstanding any other rules, exempt for a specific period, SC/ST members already in service from passing tests for promotion. Under this rule, the government passed an order in 1972 granting exemption for two years to SC/ST members in service from passing all tests. On that basis several promotions were made. Those who were superseded by SC/ST moved the high court. They pointed out that out of 51 vacancies for upper division clerks 34 were filled up by SC members who did not possess qualifications and only 17 were given to qualified persons. They argued that Rule 13AA was unconstitutional as it violated the fundamental right to equal opportunity in public employment guaranteed in Article 16 (1) and (2) of the Constitution. The high court agreed with it and struck down the rule. Therefore, the state government appealed to the Supreme Court. It argued that Article 16(1) permitted rational classification.

Ruling: The Supreme Court upheld the validity of the rule and set aside the high court judgement. It stated that equality of opportunity should not be confused with absolute equality. Article 16(1) does not bar reasonable rules for selection to any employment. Promotion to a selection post is also included in the matters relating to employment. Article 16(4) provides for reservation for appointments and selection posts. In doing so the state has to take into consideration the claims of backward classes consistently with the maintenance of the efficiency of administration.

The classification of SC/ST employees separately for allowing them an extended period of two years for passing the special tests for promotion is just and reasonable. Such special treatment was an integral feature of the service conditions in Kerala and its

27. AIR 1976 SC 490

predecessor states. Rule 13AA only made it statutory. The rule was also in tune with Article 335 dealing with the claims of SC/ ST in appointment in services. Promotion to upper division clerks was governed by seniority rules. The temporary relaxation given to SC/ST was warranted due to their inadequate representation in the services and their overall backwardness.

A rule in favour of an unrepresented backward community specifying the basic needs of efficiency of administration would not violate Articles 14, 16(1) and 16 (2). The rule in the present case did not impair the test of efficiency in administration as SC/ ST members had to acquire the qualification of passing the test. The only relaxation was in giving them two years more time to do so.

28. FIXING OF FAMILY INCOME LIMIT VALID

K.S. Jayasree vs. State of Kerala

This judgement emphasises that caste alone cannot be the test of backwardness and poverty is another. Therefore, economic criterion for eligibility for reservation was held valid.

Facts: The Kerala Government passed an order under which reservation in medical colleges for members of socially and educationally backward classes was available only to those who came from families whose annual income was below Rs 10,000. In this case, the candidate belonged to a backward community, but her family income was above Rs 10,000. Therefore, her claim to the medical seat was rejected and candidates with lesser marks were admitted, from her own community. This was challenged in the Supreme Court. She argued that the government order was violative of Article 15(4) of the Constitution. There was no reason to exclude a section of the community only on the basis of income. Income cannot be a criterion, it was argued. The government maintained that Article 15(4) was not violated because 'backward class' was not used in the provision as synonymous with backward caste. The backwardness must be both social and educational. Caste cannot be the sole criterion.

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28. AIR 1976 SC 2381

Ruling: The Supreme Court dismissed the petition, accepting the government's arguments and relying on its earlier judgement in AIR 1964 SC 1823. It also referred to the report of a backward classes commission which had stated that the rich segment of the backward communities was not suffering discrimination, though they have not acquired a high level of education.

In ascertaining social backwardness, caste cannot be the sole test. Backwardness could be the result of poverty. Therefore, both caste and poverty should be considered, not just one of them.

Moreover, determination of backwardness is not a simple thing. This is the function of the state. The court's jurisdiction is only to decide whether the tests applied are valid. In this case, the commission had determined the class which deserved special protection on the basis of the principles laid down earlier by the Supreme Court. Therefore, the petition was dismissed.

29. CORRECTING 'REGIONAL IMBALANCES' VAGUE AND INVALID

Nishi Maghu vs. State of J & K

The Supreme Court ruled that selection of candidates to the State medical college to "correct regional imbalances" without identifying the areas was illegal. But it upheld selection on the basis of 'social castes' with reference to their occupation.

Facts: The selection of candidates to the Government college in Jammu was challenged in this petition by some who were not selected. The selection was challenged on several grounds. But some of the arguments relevant here are that 18 percent seats were reserved for rectifying regional imbalances and some seats for 'social castes'. It was argued that the order did not identify the areas which suffered from imbalances, nor were there any guidelines to the selection committee. Despite that, nine candidates were selected under this category, it was alleged. The government referred to the disadvantages suffered by areas which adjoined actual line of control and 'bad pockets' and asserted that there were other areas which received lesser attention in economic development.

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29. AIR 1980 SC 1975

Ruling: The Supreme Court held that this classification was vague and therefore invalid. The nine selections were thus struck down. However, the challenge to reservation of seats for candidates from bad pockets and areas adjoining the actual line of control was held valid as the residents of those areas were indisputably backward.

The court rejected the challenge to reservation for 'social castes.' Such castes were listed in a schedule. They were identified by a committee as backward. The basis of identification was their occupation. Therefore, the list was valid. There was objection to a Christian candidate's selection, as Christians did not belong to any of the castes listed. But the court stated that as the category was based not on caste, but on occupation, the objection could not be sustained.

30. RECONVERTED HINDU BELONGS TO SC

C.M. Arumugam vs. S. Rajagopal

Two political rivals fought over a SC reserved seat in the Mysore high court and the Supreme Court. The Supreme Court ruled that a Hindu who converted to Christianity and was reconverted to Hinduism is a Hindu if his fellow castemen accepted him.

Facts: Both candidates were contesting the KGF (Reserved) Constituency several times. In this year, 1972, the nomination of Rajagopal was rejected on the ground that he was not an Adi Dravida as claimed by him but a converted Christian. Rajagopal claimed that he was never converted to Christianity, and even if he was once converted, he was reconverted to Hinduism since long and was accepted by the Adi Dravida community. The election took place without Rajagopal as a candidate and Arumugam won the Assembly seat. Rajagopal moved an election petition in the high court challenging the election on the ground that his nomination papers were wrongly rejected. The high court allowed the petition and set aside the election. Therefore, Arumugam appealed to the Supreme Court.

Ruling: The Supreme Court upheld the high court ruling and

30. AIR 1976 SC 939

dismissed the appeal. The judgement waded through several high court judgements on the point of conversion, starting from a Madras decision in 1886. The consistent view was that on reconversion to Hinduism, a person can once again become a member of the caste in which he was born if the members of the caste accepted him as a member. This was the view for almost a century.

If a person can be reconverted to Hinduism, there was no reason why he should not be able to come back to his caste if the other members of the caste were prepared to admit him as a member. In this case, Rajagopal was recognised and accepted as an Adi Dravida, the judgement concluded.

31. RECONVERTED HINDU'S CLAIM TO MEDICAL ADMISSION

Guntur Medical College vs. Mohan Rao

As in the previous case, the question was the status of a reconverted Hindu. That case was about a reserved Assembly Constituency; this one is about reservation in a medical college, and in this case it was the parents who had been originally converted.

Facts: The parents of Mohan Rao originally professed Hindu religion and belonged to Madiga (SC) caste. They were both converted to Christianity. The boy was born after that. In AP at that time, converts to Christianity were treated as backward class for reserved seats. Claiming to be a backward class, he applied for a reserved medical seat. But he did not get it. So he got himself converted to Hinduism through a "sudhi" ceremony and he was received back into the Madiga caste of Hindu fold. He applied again for medical admission, and he got provisional admission. Later, his admission was cancelled on the ground that he was not a Hindu by birth. The rule was "no candidate can claim to belong to the SC except by birth." Therefore, the boy challenged the cancellation of his seat in the high court and argued that the rule was illegal. His petition was allowed. The high court held that according to the Constitution (SC) Order 1950, the only requirement was that a person should profess Hindu or Sikh reli-

31. AIR 1976 SC 1904

gion--it did not prescribe that he should be a Hindu by birth. Therefore, the medical college appealed to the Supreme Court.

Ruling: The five-judge constitution bench followed the reasoning of the Arumugam case summarised earlier. On conversion to Hinduism, a person can once again become a member of the caste in which he was born and to which he belonged before conversion to another religion if the members of the caste accepted him as a member. That principle is equally applicable in a case where the parents of a person are converted from Hinduism to Christianity and he is born after their conversion and on his subsequently embracing Hinduism. The only condition is that he should be accepted as a member by the caste to which his parents belonged prior to their conversion. It is for the members of the caste to decide whether or not to admit a person within the caste. Since caste is a social combination of persons governed by its rules and regulations, it may, if its rules so provide, admit a new member just as it may expel an existing member. Their acceptance is the key test. Thus the Supreme Court dismissed the appeal.

32. PRE-INDEPENDENCE CASTE LIST INVALID

Chotey Lal Pandey vs. State of U.P.

The UP government order providing for reservation of seats for backward classes on the basis of caste alone by enumerating the castes mentioned in the list prepared by the pre-Independent provincial government in 1945 was held not sustainable by the high court, calling it a "fraud on the Constitutional power" conferred under Articles 15(4) and 16(4) of the Constitution.

Facts: The petitioners, who were advocates, challenged in a writ petition the reservation of posts in the UP judicial service for backward classes and several other categories. They alleged that Ahirs, Kurmis and other castes listed as backward classes by the government order were not economically or socially backward. Reservation for them was made with political motive, it was alleged. The state government defended its list of backward classes, stating that caste was only one test of backwardness. The listed classes were not adequately represented in public service accord-

32. AIR 1979 All.135

ing to the government. It further argued that as early as in 1945, the Education Department of the Provincial Government had prepared a list of 59 communities that consisted of 38 castes belonging to the Hindu community and 21 castes belonging to the Muslim community. This list was followed by the government.

Ruling: The backward classes list was held to be unsustainable and reservation on the basis of that was struck down. The 1945 list was presumably prepared on the basis that those castes were at that point of time educationally backward, though the tests applied have not been disclosed. The phenomenal progress made after independence in the fields of irrigation, mechanisation of agriculture, community development and the like has led to the Green Revolution transforming the face of the countryside. Therefore, many old social handicaps have disappeared. Moreover,. successive general elections based on adult suffrage at all levels have led to shifts in centres of influence and prestige in society. Therefore, to proceed on the basis of the 1945 list "would fly in the face of the repeated exhortations of the Supreme Court to constantly review the provision of different classes in the context of backwardness and cannot to allow reservation of seats on the basis of backwardness to become a vested interest (AIR 1971 SC 2303)," the high court emphasised. The government was directed not to make reservation of posts for backward classes based on the prescribed list.

33. ELECTION APPEAL OVER TRIBAL NAME

Dadaji vs. Sukhdeobabu

In this case, the defeated candidate successfully challenged the election of the winning candidate, alleging that he did not belong to the tribe he had declared in the nomination papers.

Facts: The parties to this case contested from the Armori Constituency reserved for ST. Dadaji secured the largest number of votes and was declared elected. He had declared himself to belong to 'Mana' community, which was ST. After the election the candidate who got the next highest number of votes filed an election

33. AIR 1980 SC 150

petition before the Bombay high court. One ground was that Dadaji did not belong to ST, and therefore his nomination was invalid. It was alleged that he belonged to Kshetriya Bidwaik Mana community and not to the Mana community. The high court accepted the contention and declared his election void. Therefore, he appealed to the Supreme Court.

Ruling: The Supreme Court upheld the high court judgement. Kshetriya Bidwaik Mana community is not a tribe mentioned in the Schedule to the Constitution (ST) Order 1950, amended in 1976. Mana community referred to in the schedule is a sub-tribe of 'Gond'. Therefore, a person belonging to Kshetriya Bidwaik Mana is not eligible to contest election in the reserved constituency. If Parliament had intended to treat persons belonging to Kshetriya Bidwaik Mana also as ST, it would have mentioned Mana under an independent entry.

A reading of the schedule to the order shows that where there are two communities with the same name, one having affinity with a tribe and the other not having anything to do with such tribe and both are treated as ST, the community which has affinity with another tribe is shown along with it in the same group against a single entry and the other is shown against a different entry, the judgement pointed out.

34. RESERVATION IN RAILWAY JOBS UPHELD

Akhil Bharatiya Soshit Karamchari Sangh (Railway)

vs.

Union of India

This is a leading judgement on reservation for promotion posts. It is also a long and difficult essay on the social problem of SC/ST, laced with poetry, quotations from philosophers and high-flown language used by Justice Krishna Iyer.

Facts: The Railway Board issued certain directives intended to protect SC/ST in matters of promotion. For instance, it provided for reservation for SC/ST only in selection posts to be filled by promotion. In promotion by selection from class III to class II,

34. AIR 1981 SC 298

eligible SC/ST candidates were given one grade higher than that which were due to them on the basis of their record of service. It provided for raising of percentage of directly recruited SC/ST candidates in the light of the census report. It also provided for in-service training to SC/ST members who were below the standard. It further introduced 'carry forward' and provided further facilities to them. These benefits were challenged as discriminatory against the vast number of employees of the railways. They would affect the overall administrative efficiency and frustrate the promotional hopes of senior employees. The 'benign discrimination' has been blown up out of all proportion to the realities. This was done to benefit politically powerful castes and it would fragment society, it was argued.

Ruling: The Supreme Court dismissed the challenge in a unanimous but three separate judgements of the division bench. The main judgement of Justice Krishna Iyer stated the state may classify, based upon substantial criteria, groups of classes. This process did not necessarily violate Articles 14 - 16 of the Constitution. Since there is a great dividing line between SC/ST and the rest of the community the fundamental right of equality of opportunity has to be read as justifying the categorisation of SC/ST separately for the purpose of 'adequate representation' in the services. The classification is just and reasonable and valid under Articles 16(4) and 46.

However, reservation should not be applied with overkill. Obsession with backwardness and politicking with castes may in appropriate cases, demand judicial examination.

Reservation for SC/ST in matters of promotion has already been upheld in (1962) 2 SCR 586. The other provisions in the railway circulars were also upheld in the present judgement.

Further, the judgement underlined that constitutional questions must be answered in the social milieu which gives it living meaning.

35. CONCESSION TO CANDIDATES FROM N-E STATES

Javed Beg vs. Union of India

The Supreme Court upholds the exemption granted to candidates from north-eastern states appearing for All-India Services examination as their languages are not as developed as those in the Eighth Schedule to the Constitution.

Facts: Candidates from the Hindi belt challenged a rule for competitive examinations to the All-India Services in the Supreme Court through a writ petition. According to the rule, Paper I on Indian languages will not be compulsory for candidates from Arunachal Pradesh, Manipur, Meghalaya, Mizoram and Nagaland. It was argued that this was discrimination and violative of Articles 14 and 16 of the Constitution. Classification based only on language was unconstitutional, it was argued.

Ruling: The Supreme Court rejected the petition and upheld the rule. It said that the integrity of India was of supreme value. It was "notorious" that the north-eastern states had handicaps in the matter of language. The Eight Schedule to the Constitution has set out the prominent languages of India. But those linguistically less advanced groups who are outside the Schedule should be given equal opportunity. They may suffer serious disabilities if forced to take examinations in those languages. Logically, an option for them to take or not to take Paper I on Indian languages was a facility which put them on par with the rest, once we understand that equalisation was part of the dynamics of equality. This concession was not contravention of equality but conducive to equality. It helped a handicapped group and did not hamper those who were ahead. The court hoped that candidates from the north-east would take advantage of the rule and join the services in larger numbers in future.

36. WRANGLE OVER ENGINEERING SEATS

P. Lakshmkipathi vs. College of Engineering

The courts have emphasised in several judgements that it was not for them to prescribe the procedure which universities

35. AIR 1981 SC 794
36. AIR 1982 AP 424

must follow in the matter of admission of students to various courses. But invariably they are dragged into controversy because of the alleged violation of someone's fundamental rights, as in this case involving reserved seats for backward classes.

Facts: For some time each university in Andhra Pradesh was admitting students separately. This caused difficulty due to different dates of exams and admissions. Therefore, it was decided to have a common entrance test for all. Out of the total seats, SC, ST and backward classes were allotted separate quotas. Backward classes were further divided into A and B groups. There were several specialised courses and some of them were more coveted than the others. When applications were called for, students were not asked to indicate their preference of speciality. It was done at the time of interview. In the case of candidates belonging to backward classes, they were allowed to shift to the reserved quota with a view to accommodate and respect their choice of subject. But by that time the number of seats available for general quota in that course were filled up by candidates with higher rank. Therefore, they were asked to show their other preferences. But they insisted on reserved seats for their choice subjects. This upset the whole system and various candidates moved the high court.

Ruling: The court stated that the procedure adopted by the universities has violated the rule of reservation laid down by the government. The 18 petitioners were among 25 candidates who had been deprived of admission to the courses altogether for the sake of accommodating backward classes in the general pool. The court held that the 18 candidates were entitled to admission. Though it was pleaded by the universities that seats have been filled up, the court asked them to accommodate the candidates.

The court further laid down guidelines as to what ought to have been done. For instance, it stated that the rule of reservation ought to have been applied to the total seats and not separately to each subject. The general pool candidates should have been called first in order of merit, whether they were in the reserved or non-reserved group. There could have been no question of any candidate from the general pool being transferred to the reserved

quota. In choice of subjects, merit should have been the consideration. After the general seats are filled up, the reserved lists ought to have been taken up.

37. BACKWARD CASTE OR BACKWARD TRIBE?

State of Karnataka vs. M.P. Shylaja

This case focuses attention on the confusion over caste/tribal names, and how two benches of the Karnataka high court solved it. The judgement also requests the government to introduce economic criterion for ST.

Facts: In her application for medical seat, Shylaja described her caste as Bestar, claiming to belong to ST. She had enclosed tahsildar's caste certificate. During her interrogation by the selection committee, she stated that her community's profession was fishing. The committee concluded that she did not belong to ST, but to Bestha caste, which was one of the backward castes. Since she was put in the SC category she did not get the medical seat as her marks were not sufficiently high. She moved the high court, asserting that she belonged to ST. It was further argued that backward communities among Muslims were given reservation, though there were no SC/ST among them. Therefore, ST candidates from the Muslim community should be eliminated to give her a seat, it was contended. The judge allowed her petition. He said that her caste certificate should be taken as true and the difference in spelling the caste should not be blown up. The government appealed against it.

Ruling: The government argued that according to the report of the state backward classes commission, the traditional occupation of Bestar caste was begging, while that of Bestha caste was fishing. During the interrogation, she stated that she belonged to the fisherman community. It was further submitted that she did not show her real caste as there was an income limit for SC, and her father was a medical practitioner. Therefore, she claimed to be ST, in which case there was no income limit. The division bench held that the single judge was wrong in holding that Bestha and Bestar were the same caste and the difference in spelling was inconsequential. They were entirely different castes.

37. AIR 1982 Karnataka 40

The court further held that the selection committee had the power to verify the particulars given by the candidates. Since the rules grant power to the committee to check false claims made by applicants, the certificate given by tahsildar or any person in authority was not conclusive. The committee had the power to verify the truth of the certificate.

A section of Muslims whose traditional occupation was begging was also included in ST. Therefore, the court rejected the argument that caste could not be given reservation.

In conclusion, the court asked the government to impose a monetary limit on ST as it had done in the case of SC, to avoid misuse of reservation by the different section of ST.

38. DISPOSSESSION OF ST PROPERTY PREVENTED

K. Adikanda Patra vs. Gandna

This judgement is significant in two ways. It stops the dispossession of land belonging to ST on a money decree. Secondly it lays down the tests for determining the question whether a person is a member of ST.

Facts: This case arose of out a dispute over land. The tribals had borrowed money from a local man and were not able to return it. Therefore, a money decree was passed against them. Later the land was put to court auction. It was sold and the sale was confirmed. Later the tribals filed a suit claiming that as they were ST, the sale of the land in court auction without the permission of the competent authority was violative of the regulations made by the state government. It was dismissed. After further tortuous litigation, the dispute landed in the Orissa high court.

Ruling: The petition of the buyers of the land claiming its possession was dismissed. The land was ordered to be restored to the tribals.

According to 1956 Orissa Regulation No.2, any sale of immovable property by any ST member shall be void unless made in favour of another member of ST or with the previous consent

38. AIR 1983 Orissa 89

in writing of the competent authority. There were also controls on attachment and sale of the property in execution of money decree. Therefore, the auction sale in this case was invalid, the high court said, as there was no prior sanction from the competent authority.

The high court rejected the argument of the purchasers that the objection regarding the regulation was not raised earlier and therefore it could not be raised at the late stage in the high court. The judgement said that it could be raised as the basic issue was the validity of the sale.

There was an argument about the tribe of the original land-holders. The high court ruled that 'Savar' tribe in Orissa included 'Jarasavar', according to the Constitution (ST) Order 1950. While determining the question of tribe according to Article 342 of the Constitution, the following rules were laid down. (1) Generally, it would be open to any person to lead evidence to establish that a particular caste/tribe was part of the caste/tribe notified under the 1950 Order. (2) To determine the question of caste/tribe, the public notification must be referred to, (3) The name by which a caste or sub-caste is known is not decisive. It may be shown that the name included in the order is a general name applicable to sub-castes/sub-tribes. (4) Para 2 of the order provides that the tribes, or parts of, or groups within the tribes specified in the schedule to the order shall also be deemed to be ST. (5) An admission made by a party that he belongs to a SC/ST is evidence against him, but it is not conclusive.

39. CHANGING CASTE ENTRY IN SCHOOL CERTIFICATE

M.K. Santhamma vs. Kerala PSC

An SC candidate entered her caste name in the SSLC certificate, thus inviting allegations of 'tampering' with it. The Kerala high court favours her, as the entry was not false.

Facts: Santhamma, daughter of a SC coolie reached 10th standard at the age of 22 and she applied for the government nursing course. By some omission, the caste entry in her certificate was

39. AIR 1983 Kerala 84

left blank. She filled it up on her own, thinking that it was not an offence. She entered her SC name there. The State Public Service Commission took objection to it when she was 38 years old and removed her name from the selection list for tampering with her certificate. Therefore, she moved the high court.

Ruling: The court allowed her petition and directed the PSC to appoint her as staff nurse according to the rank list. It said that PSC had failed to examine all the relevant aspects of the case. Though irregularities should be curbed, the gravity of the misconduct and punishment should be rationally related. The petitioner had not made any false claim, but only supplied information, though the manner was unauthorised. The rules prevent making of false claims. Here there was no such claim.

The court emphasised that it had power to regulate the discretion given to PSC by law. The power of judicial review is very wide. Article 16(4) providing for reservation should be read along with Article 14, which includes fairplay and reasonableness. When the PSC fails to take all relevant aspects into consideration and exercises power mechanically, the court has a duty to interfere, the judgement stressed.

40. ELECTION FROM SC CONSTITUENCY HELD INVALID

Rikhi Ram vs. Ganu Ram

The election of a candidate from a SC reserved constituency was held invalid because he had not declared his caste in the nomination form.

Facts: Ganu Ram was elected from the Gehrwin (SC) reserved constituency as he polled the highest votes. The candidate who got the next highest number of votes challenged Ganu Ram's election on the ground that he had not declared his caste in the nomination form. It was also alleged that he did not belong to SC, but belonged to 'Dhiman' caste and he had declared so when he got admission of his son to the school. Ganu Ram replied that though he had not filled up the caste column in the nomination papers, he

40. AIR 1983 HP 85

had attached a certificate from the sub-divisional magistrate in which he was described as belonging to 'Lohar' Scheduled Caste. The filing of the certificate was sufficient compliance of Section 33(2) of the Representation of the People Act. The use of the word 'Dhiman' after his name was common among the artisan class and he in fact belonged to the Lohar caste, which was notified in the 1950 presidential order.

Ruling: The court held that the election was void as Ganu Ram was not qualified to stand for election. The candidate must declare his caste in the form, and not in enclosures. The certificate filed cannot be treated as part of the nomination paper. The certificate, moreover, does not contain the candidate's signature. Failure to follow prescribed procedures would render the nomination invalid. The defect here was of a substantial nature, and even entailed penal consequences. Therefore, acceptance of the nomination paper by the election officer was improper, the court ruled.

41. MEMBERS OF 'CRIMINAL' TRIBE CHALLENGE 1950 ORDER

Buta Ram vs. Union of India

Some members of the Vimukta Jatis challenged the Constitution (SC) Order 1950, claiming that they should have been included in the Constitution (ST) Order 1950. The challenge was rejected by the Punjab and Haryana high court.

Facts: The petitioners' case was that they belonged to the Vimukta Jatis which was known as criminal tribes during the British regime. The British passed the Criminal Tribes Act, naming certain tribes as criminal. It was claimed by the petitioners that their ancestors were in fact Rajputs and they migrated from Mewar to different parts of the country in the 16th century and acquired a nomadic character. Those tribes did not cooperate with the British and because of the nomadic character became educationally and economically backward. In 1950, the two presidential orders were issued regarding SC/ST under Articles 342 and 343 and the Criminal Tribes Act was repealed. The tribes were denotified and came to be known as Vimukta Jatis. They were treated as SC and were

41. AIR 1983 Punjab & Haryana 230

included in the 1950 SC Order. The petitioners argued that they did not have the characteristics of SC and they should be included in the 1950 ST Order. The government declared the criteria adopted for the classification and asserted that Vimukta Jatis did not belong to ST.

Ruling: The court was in favour of including them in the ST Order, but it held that the SC order was not ultra virus on that account. Since the Vimukta Jatis were not backward on account of untouchability (one of the criterion for SC classification), they could not be included in the SC list, but should be included in the ST list. However, the SC Order could not be struck down merely on the ground that Vimukta Jatis were included in it. At best they can be deleted from the list. The order does not infringe upon the Constitution. The court urged the government to consider their deletion from the SC list and inclusion in the ST list.

42. GOVERNMENT COMPANY'S SELECTION METHOD HELD INVALID

Bihar State Harijan Kalyan Parishad vs. Union of India

The Supreme Court ruled that the Presidential directive to the chief executives of public enterprises on reservation for SC/ ST should be followed in the correct manner and quashed two letters issued by the Steel Authority of India.

Facts: The petitioner challenged in the Patna high court two letters, one from the Steel Ministry to the Steel Authority of India, and another from the chairman of the authority to the chief personnel manager of the Bokaro steel plant. The effect of the two letters was to deny to the SC/ST the benefit of reservation in the matter of promotion to selection posts within 'Group A'. According to the government directive to the chief executives of all public enterprises, the rules of reservation for SC/ST were applicable to promotions by selection to posts within Group A, which carried an ultimate salary of Rs 2,250 per month or less. But the procedure was slightly different in the case of other posts. It was prescribed that only those officers belonging to SC/ST would be considered who were senior to be within the zone of consider-

42. AIR 1985 SC 983

ation. Then a select list would be prepared in which would be included those SC/ST officers who were not considered unfit for promotion. Their position would be that assigned to them by the promotion committee on the basis of the service records. Their inclusion in the select list would not give them seniority merely by virtue of belonging to SC/ST. While this was the normal interpretation of the government directive, two letters were issued as stated above. According to them, there was no reservation for SC/ST in promotion by selection to posts within Group A which carried an ultimate salary of Rs 2,250. This was challenged in the high court, which dismissed the petition. Therefore, the petitioner came on appeal.

Ruling: The Supreme Court reversed the high court ruling and allowed the appeal. It stated that the two letters were contrary to the presidential directive. The directive assumed that reservation did apply in the selection, but prescribed a separate procedure for that. The Steel Ministry has done a "volte face", which was surprising, the judgement said. It was asked to give effect to the interpretation given by the court.

43. JUDGES' VIEWS ON RESERVATION

K.C. Vasantha Kumar vs. State of Karnataka

This is a peculiar 'judgement', as it is not a decision on facts but opinions of five judges on reservation for SC/ST. The Supreme Court has been criticised for writing such a document which has no binding value.

Facts: The Karnataka Government proposed to set up a commission to study reservation following intense debate on this point in the state. When the issue was taken to the Supreme Court by the petitioner, counsel only sought the judges' views to serve as guidelines to be followed by the proposed commission for SC/ST/OBCs. Chief Justice Y.V. Chandrachud, who headed the five-judge bench wrote: "A somewhat unusual exercise is being undertaken by the court in giving expression to its views without reference to specific facts. But institutions profit by well-meaning innovations."

43. AIR 1985 SC 1495

Ruling: Since there is no ruling as such, the following are some views expressed by the individual judges. These can be used to buttress one's arguments.

Reservation must continue as at present (1985), without the means test, for at least 15 years. The test of economic backwardness ought to be made applicable even after 2000 AD. Reservation policy must be periodically reviewed (Chandrachud).

The time has come to review the criterion for identifying the backward classes ignoring the caste label. The only criterion should be economic backwardness. Benefits of reservation has so far been snatched by the creamy layer of the backward castes. This must be avoided at all costs (D.A. Desai).

There is neither statistical basis nor expert evidence to support the assumption that efficiency will necessarily be impaired if reservation exceeds 50 per cent, if reservation is carried forward, or if it is extended to promotion posts ... Class poverty, not individual poverty, is the primary test. Other tests are the standard of living, the place in the hierarchy, the habits and customs etc. (Chinnappa Reddy).

Economic backwardness is the test to determine backwardness. Caste should be used only for identification ... Since the problem of reservation cannot be resolved through litigation the Central Government should consider setting up of a permanent national commission for backward classes (A.P. Sen).

It is now necessary to re-determine the question of backwardness of the various castes, tribes and communities in the light of the latest figures and to refix the extent of reservation for backward classes ... There are in all castes and communities poor people who deserve to be given liberal grants of scholarships and other educational facilities to attain a high degree of proficiency (E.S. Venkataramiah).

44. 'PROVISIONAL' CASTE CERTIFICATE NOT RATIONAL METHOD

State of Maharashtra vs. Abhay

If the state authorities start issuing 'provisional' certificates on caste status and after admission to reserved seat, the caste finding is reversed, it creates problem for the selected candidates as well as for others. Therefore, the Supreme Court asks the Mahatrashtra government to think of a rational method to issue such certificates.

Facts: A candidate was selected on the strength of a provisional caste certificate issued by the concerned authority that he belonged to 'Halba', claimed to be ST in Maharashtra. But his selection was challenged on the ground that Halba was not a ST. The Bombay high court held it was ST and therefore the candidate was qualified for reservation. This was challenged by the state government in the Supreme Court.

Ruling: The court did not disturb the high court judgement. However, it clarified that the high court judgement would be applicable only in the case of this particular candidate, and none else. The certificate issued in his favour shall be valid. But the larger question decided by the high court as to whether Halba was a ST was kept open. It would be open to the state government to raise that question again. The Supreme Court declined to give a finding in this judgement.

But the Supreme Court stated that to avoid disputes like this one where admission is granted on a provisional certificate which is liable to be varied or cancelled at a later stage causing irreparable harm and deep frustration to the candidate who secured admission on a provisional certificate the state government should devise a more rational method for getting much in advance a certificate on the strength of which a reserved seat is claimed. The present method of issuing a provisional certificate which can be invalidated at a later stage is objectionable for more than one reason.

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44. AIR 1985 SC 328

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"We consider it more desirable that the government shall devise a proper procedure which must commence soon after the candidate clears examination by the board at the end of class X in secondary school, for issuing the final certificate after making whatever necessary enquiry they may want to initiate before the certificate can be granted and submitted for admission on passing the higher secondary examination. The intending candidate may be directed to preferably make the application as soon as or soon after he gets admission in XI standard. On receipt of the application, the enquiry may start as early as possible and the candidate will have to submit to such enquiry to obtain a regular certificate. Whatever enquiry is to be held must be completed at least two months before the result of the higher secondary examination is declared, whereafter one becomes eligible to seek admission to a medical college."

45. TRANSFER OF TRIBALS' AGRICULTURAL LAND

Lingappa Pochanna vs. State of Maharashtra

This is a significant judgement upholding a law which protects the agricultural land of tribals. The main argument against the law was constitutional, but the Supreme Court gave a socially vibrant interpretation to the legislation.

Facts: The Maharashtra Restoration of Lands to ST Act 1975 annulled transfers made by ST to non-tribals and restored them on certain conditions. The Act was challenged in the high court alleging that the state legislature had no constitutional authority to pass such a law. It was argued that it was beyond the purview of Entry 18 of List II of the Seventh Schedule of the Constitution or was otherwise violative of Articles 14, 19 (1) (f) and 31 of the Constitution. The high court dismissed the writ petition. Therefore, the appeal was filed before the Supreme Court.

Ruling: The Supreme Court also dismissed the appeal. Firstly, it said that the Act has been placed in the Ninth Schedule of the Constitution and is therefore immune under Article 31-B from any challenge. It also held that the state had power to pass the law under Entry 18 of List II. The power to legislate cannot be denied

45. AIR 1985 SC 389

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to the state on the ground that the provision for annulment of land transfers incidentally trenched upon the existing laws, namely, the Transfer of Property Act or the Specific Relief Act. The power under Entry 18 carries with it not only a power to make a law placing restrictions on transfers and alienations of such lands, including a prohibition thereof, but also the power to make a law to reopen such transfers and alienations.

Further, the legislation is a typical illustration of distributive justice, as modern jurisprudence knows it and legislators, judges and administrators are now familiar with it. The Constitution even directs the state to administer 'distributive justice'. Distributive justice comprehends more than achieving lessening of inequalities by differential taxation, giving debt relief or distribution of property owned by one to marry etc. It also means that those who have been deprived of their properties by unconscionable bargaining should be restored their property. All such laws may take the form of forced redistribution of wealth as a means of achieving a fair division of material resources.

The Act cannot be said to offend the equality provision in Article 14 as members of ST form a distinct class who need the special protection of the state. Moreover, it is not for the courts to examine how far and at what stages laws are to be implemented.

The Act had also barred the lawyer's appearance before the collector in land matters. This was challenged as violation of lawyers' right to practise. The argument was rejected. Section 30 of the Advocates Act which grants a right to practise before all courts and tribunals has not been brought into force. Moreover, the litigant also has no right to have a legal practitioner before the collector. The only situation where a person has such right is in Article 22(1) when he is arrested and detained, but not in suits. Perhaps the legislators thought that non-tribals would take advantage of lawyers' presence to prolong the proceedings. Tribals and non-tribals are placed unequally in this respect, the Supreme Court pointed out.

46. RESERVATION IN MINORITY-RUN INSTITUTIONS

Khan Abdul Hamid vs. Mohd. Haji Polytechnic

In this case, the Bombay high court says that a restriction prescribing that a certain percentage of students belonging to ST should be admitted even by non-government polytechnics in Maharashtra was not applicable to minority institutions.

Facts: The petitioner, a student, belonged to a Muslim ST known as "Tadir". He applied for admission to the polytechnic. His application was rejected because others who got higher marks were selected. He challenged this, basing his claim on a Maharashtra government resolution prescribing seats for backward classes in all polytechnics, government or non-government. If this resolution was applicable to the present institution, the petitioner would have got admission, it was contended. But the minority-run polytechnic contended that according to Supreme Court rulings, a resolution of this type could not be enforced against minority institutions as it would offend rights guaranteed to minorities under Article 30(1) of the Constitution.

Ruling: The high court dismissed the petition and held that Article 30(1) was absolute in terms. It could not be made subject to reasonable restrictions as the other fundamental rights. This was clear from constitution bench judgements of the Supreme Court, the high court pointed out. The high court further said that a regulation which prescribed a certain percentage of seats to backward classes for tribes might be in public interest. It might be in the interest of bringing up the educational level of those people. But such regulation could not be regarded as conducive to the improvement of the quality of education or to excellence in education.

47. SCHOOL CERTIFICATE ON CASTE FINAL

Abhay Shrawanji vs. State of Maharashtra

This is a dispute over the name of the caste of the petitioner. After long procedures, it was found that the school certificate regarding his caste was final.

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46. AIR 1985 Bombay 394
47. AIR 1985 Bombay 45

Facts: The petitioner was given a caste certificate by the executive magistrate stating that he belonged to Halba ST as mentioned in the SC/ST Orders (Amendment) Act 1976. It was based on the school leaving certificate. On that basis, he was admitted to MBBS in the Nagpur Medical College. According to the practice, the matter was referred to the Director of Social Welfare Department for verification of caste. It concluded that the student did not belong to the Halba tribe. On appeal the Divisional Commissioner also confirmed the decision of the Welfare Department. It was stated that his father had given his caste as "Koshti", and not Halba, in his certificate. His father submitted that Koshti (weaver) was his traditional profession and not caste. Moreover, he had a meritorious career and therefore there was no need to give a false caste certificate, especially since there was no benefit from the caste certificate at the relevant time. The certificates of certain relatives of the petitioner showing them as belonging to the Halba tribe was also presented. However, his claim was rejected leading to the petition.

Ruling: The Bombay high court set aside the orders of the authorities invalidating his caste certificate. The Halba certificate was upheld. The state government had issued a circular stating that as far as Halbas were concerned, the school certificate should be accepted as final. The court stated that the attention of the authorities were not drawn to this circular, which had binding force. In view of the circular, it was futile to hold an elaborate enquiry, going behind the circular, especially since the genuineness of the school certificate was not in doubt. Even according to earlier state government guidelines, the claim regarding caste should be held valid in case the caste tallies with the school certificate. There was no reason to discard the caste certificates of blood relations. The father's explanation about the caste name could not be rejected, the high court stated.

48. BACKWARD CANDIDATES WINNING ON MERIT BASIS

Anil vs. Dean, Medical College

If a backward class candidate gets a seat in the open quota on his own merit, can the backward classes quota be reduced to

48. AIR 1985 Bombay 153

that extent? This question is discussed in this judgement of the Bombay high court. It rules that a backward class candidate who gets a seat in the open merit should be counted in the backward classes quota. (There are contrary judgements also on this point).

Facts: In the rules for regulating admissions to medical colleges in Maharashtra, there was one which reserved 10 per cent seats to backward classes. According to the controversial sub-clause, 10 per cent was not an overall ceiling. It was open to them to secure more than 10 per cent seats on the basis of merit. "However, if the admissions they secure on merit are less than 10 per cent, there should be reservation for them to the extent of the shortfall below 10 per cent." The petitioner belonged to a backward class, who missed a seat because of this rule. He argued that candidates from backward classes who get seats on merit should be kept separately from those who apply under the reserved quota. The reserved quota should not be affected in any case. Admission for the backward classes should be in two separate streams, he argued. Therefore, the rule should be struck down, according to him.

Ruling: The Bombay high court dismissed the petition and upheld the rule. It explained that the purpose of reservation was to guarantee the backward communities the minimum number of seats, as they may not compete well with the advanced classes. If the petitioner's argument was accepted, it would mean that over and above such candidates being admitted on their own merit, more candidates to the extent of the reserved seats should also be admitted, thus enlarging the number of candidates belonging to backward classes above that reserved for them.

If the minimum number of seats guaranteed under the reservation was filled in by candidates competing in open merit, the purpose of the reservation would serve itself. It would not be necessary in that case to admit candidates further against the reserved seats. Otherwise, Article 29(2) would be violated, the high court stated. Article 15(4) is an enabling provision and backward classes cannot claim a right under it to reservation. The high court agreed with the view taken by the high courts in AIR 1958 AP 569 and AIR 1961 Mysore 220. It disagreed with the contrary view held by the Kerala high court in 1964 Kerala 39.

49. CURB ON TRANSFER OF TRIBAL LAND

Janabai vs. Laxman

This judgement of the Bombay high court deals with the Maharashtra law curbing transfer of cultivable land to non-tribals. Some other states also have passed similar laws.

Facts: The Maharashtra Restoration of Lands to ST Act was passed in 1974. A large number of petitions were filed against it on the ground that it had infringed the fundamental rights of the petitioners (non-tribals) under Article 14 and the then existing Articles 19(1)(f) and 31 of the Constitution. The latter were deleted by a Constitution Amendment in 1978. The high court had dismissed all the challenges to the Act and the Constitution Amendment Act, holding that the land law was protected by Articles 31A as well as 31B. Then another batch of writ petitions were filed challenging Section 5A of the land law by non-tribals. This judgement relates to the second batch. The only issue raised in this batch was whether the Act infringed Article 31A(1) of the Constitution. In the petitions, the tribal transferrer was unwilling to cultivate the land personally and to pay the purchase price determined under the Act. Therefore, the authorities directed that the lands be taken possession of from the non-tribals and be vested in the state government, free from all encumbrances.

Ruling: The question was whether the land of the non-tribal acquired by the government amounted to acquisition of his estate by the state under Article 31A(1). After examining Supreme Court judgements, the high court ruled that Section 5A could not be enforced against the persons who held land under their personal cultivation within the ceiling limit prescribed in the state since their fundamental right under Article 31A(1) was contravened by the state in not providing under Section 5A(2) of the Act a payment of compensation to them at a rate not less than the market value. Thus the petitions were allowed and the orders under challenge were set aside. But there were questions of fact which had to be examined by the trial court--whether the petitioners were cultivating the lands personally and whether they were within the ceiling limits. The high court remanded these questions to the trial

49. AIR 1985 Bombay 290

court for determination and appropriate orders according to the factual position in individual cases.

50. BACKWARDNESS IN TERMS OF TERRITORY

Gundla V. Rao vs. Dist. Collector, Khammam

Though one caste/tribe may be declared SC/ST in one part of the state, the same may not be valid in other parts. Therefore, whether a village is included in an order or notification is an important issue.

Facts: The petitioner requested the AP high court to issue a direction to the tahsildar of Burgampahad taluk to issue a certificate showing that he belonged to 'Goud' Scheduled Tribe. Such certificate would help him in getting a seat in the State engineering college. The authorities had issued an order stating that Goud in that taluk did not belong to ST. The Collector further clarified in his order that Goud living in the plains should not be given ST certificate. Only those of the tribe living in the Scheduled Areas and whose occupation was cattle rearing was entitled to the certificate, the Collector ruled. This was challenged in the writ petition. The government put forward two contentions: (1) The SC/ST (Amendment) Act of 1976 in Schedule II, Part I, Item 7 declared Goud (in Agency tracts) as ST community. The Scheduled Areas (Part A States) Order 1950 mentioned only East and West Godavari and Visakapatnam as Agency areas. Therefore, no other areas can be construed as agency tracts. (2) The petitioner did not belong to Goud caste.

Ruling: The high court ruled that the petitioner belonged to Goud community in respect of Agency tracts and was entitled to a certificate showing his community as ST. The court went into several orders passed over the years and interpreted them to arrive at this conclusion. The discussion is particular to those orders and regions of the state and not of general interest, and hence omitted here.

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50. AIR 1985 A.P. 15

51. STEP TO CHECK MISUSE OF TRIBE CERTIFICATE UPHELD

K. Viswanathan vs. Government of Tamil Naau

Issuance of caste certificates has caused a number of scandals. The Tamil Nadu government put some curbs on the power to issue certificates to a certain tribe. This was challenged in the Madras high court, but the court upheld the rule.

Facts: Two petitions were filed by members of the Konda Reddi ST community challenging the state government order issued by the Social Welfare Department. According to the order, the power to issue community certificate to members of Konda Reddi ST community was vested only in the Revenue Divisional Officers instead of Tahsildars who were issuing such certificates till then. The order also specified the nature of proof which had to be adduced before the certificate was issued. There was no doubt that Konda Reddis are listed in the 1950 Presidential Order relating to STs. The argument against the order was that it was discriminatory. Konda Reddis alone were selected for certificates from a superior revenue officer for which there was no basis. Therefore, it violated the equality provision in Article 14 of the Constitution. Further, it was argued that while the central government had specified Tahsildars and others for issuing caste certificates in its 1975 order, the state government could not depart from that order. The government submitted that persons from communities with similar sounding name as Konda Reddis were getting the benefits for ST by easily getting caste certificates from Tahsildars. The order was passed to protect the genuine ST community.

Ruling: The high court dismissed the petitions, and stated that the government order was not discriminatory. Konda Reddi was in fact picked out, but that was because there was another competing forward community which wanted to take advantage of the privilege intended for the ST. Therefore, there was a rational basis for the discrimination. The object could be achieved only by taking away the power of the tahsildars. It was not violative of Articles 14 or 15(1).

51. AIR 1985 Madras 139

The fact that no Tahsildar had been prosecuted or dismissed for issuing false certificates was not a deciding factor. But there were a number of complaints that such certificates were being issued. Protecting the ST from other communities was different from punishing defaulting Tahsildars. Merely because the government had not taken action against erring Tahsildars did not mean that it could not take away their powers and vest them on a superior authority.

Regarding the power of the state government to vest powers, the court examined the 1975 central government regulation and found that it had only limited application, i.e. in employment in central services.

52. CONCESSIONS NOT AVAILABLE AT ALL STAGES

M.T. Ananthan vs. Honourary Secretary

This judgement of the Kerala high court emphasises the principle that concessions given to backward classes at the admission stage cannot be carried on to the final stages of education also.

Facts: The petitioner's minor son was admitted to the Sainik School, Trivandrum, in Class VI and reached Class XI. At that stage, he could not get the minimum prescribed marks and therefore he was asked to be withdrawn from the school according to the rules of the school. He was also barred from attending NDA entrance examination coaching classes. This was challenged in a writ petition, raising several grounds. The argument relevant here was that the school rule was opposed to Article 15(4) of the Constitution which grants special concessions to backward classes. It was contended that children belonging to SC/ST who were entitled to some concessions should be given the same concessions at the later stages also so that they might be in a position to take their final examination also.

Ruling: The high court dismissed the writ petition and also rejected the argument based on Article 15(4). "That a certain standard had to be attained before the students could present themselves for final examination is the policy of the authorities and we would be

52. AIR 1985 Kerala 62

trespassing upon their jurisdiction if we are to interfere with such policy-making decisions concerning the standard in studies and substitute our norms and ideas," the judgement explained.

Article 15(4) was meant for providing adequate opportunities for the backward classes to improve their lot. It was upto them to fully utilise such opportunities to the maximum advantage to enable them to reach the required level of excellence without expecting further concessions. It is not the object of Article 15(4) to compel the educational authorities to change their rules. The National Defence Academy has a pride of place in the country. Any deterioration in its standard would have disastrous consequence upon the security of the country in the long run. If this student, who was found wanting in dedication to duty and team spirit was to be promoted to class XII, in fairness to others who are similarly placed and ordered to be withdrawn also would have to be readmitted. That might create a condition not conducive for the meaningful functioning of the institution, the court observed.

53. GROSS INCOME TO BE CONSIDERED FOR ECONOMIC ELIGIBILITY

Aruna vs. State of Karnataka

This judgement of the Karnataka high court dealt with the question of computing the family income where a prescribed amount was fixed for eligibility for reserved quota in the professional colleges of the state. It held that gross income was to be considered for the purpose, and not taxable income.

Facts: The petitioner-candidate could not get a medical seat in the open competition for all students. Therefore, she claimed a seat under the backward classes quota. It was rejected by the selection committee. So she moved the Karnataka high court, claiming that she belonged to the Gangia community, which was declared as a backward community by the state government. She succeeded in the court as her case was directed to be reexamined by the selection committee. This time, her case was rejected because her father's annual income was above Rs 10,000. According to the state backward classes commission recommendation, such per-

53. AIR 1985 Karnataka 196

sons should not be given the benefit of reservation under Article 15(4) of the Constitution. When her claim was rejected for the second time, she moved the high court again. This time the argument was that according to the income-tax returns filed by her father, his annual income was below Rs 10,000. It was admitted that the gross receipts of her father, a chartered accountant, was Rs 15,000. But the gross receipt was no income, as allowance must be made for earning the income and the remaining amount alone constituted income in the real sense of the term, it was argued.

Ruling: The high court dismissed the petition, rejecting the submission about the gross income. It stated that the concept of income under the Income-tax Act was not relevant for the purpose of deciding the status of a person, i.e. whether he belonged to backward classes under the government order. The expression 'income' has not been defined in the order. So it should be given a meaning which it has in common parlance. The total amount which he receives constitutes his income. It is true that for purposes of tax, establishment expenditure and rent have to be deducted. But in common parlance, it is an expenditure which he has the capacity to incur because of his income.

54. HILLY ROAD TO HARIJAN VILLAGES

State of H.P. vs. Umed Ram

This public interest litigation was about a road to a Harijan village in Shimla district. This judgement deals in detail with separation of powers and the court's powers vis-a-vis those of the executive and the legislature.

Facts: Some villagers of Himachal Pradesh sent a letter-petition to the high court alleging that the construction of a road connecting their villages were prevented by persons from other villages in collusion with the authorities. They complained that in the absence of a road, they had to climb five miles of a hill to reach the nearest town, that too carrying heavy loads on their backs. They pleaded that democracy was meaningless to them under these circumstances, when they had no access to the outside world.

54. AIR 1986 SC 847

Their right to a dignified life (Article 21) and the right to move freely (Article 19) were violated, in the context of Article 38(2) which enjoined the executive to minimise equalities in income, facilities and opportunities among citizens living in different parts of the country. In its reply, the state government narrated the steps it had taken to build the road. The road could not be completed due to lack of funds, it said. The high court directed the PWD to proceed with the construction of the road and complete it within the financial years. It also asked the PWD engineer to make an application to the government to sanction the required fund and the government was requested to consider the demand favourably. The court asked the PWD engineer to report to it at the next hearing the progress of the road building. At this stage, the state government appealed to the Supreme Court objecting to the high court directions. It challenged the high court's power to direct it to allot funds to the project. Funds were allotted by the legislature in financial budgets annually. The executive decides the priorities. The court cannot interfere in the field assigned to the legislature and the executive, it was argued in the Supreme Court.

Ruling: The main part of the judgement is a discussion on the powers of the judiciary, executive and the legislature. In conclusion, the Supreme Court stated that the high court had not exceeded its power in passing the orders. The high court, in essence, had only asked the executive to bring to the notice of the legislature whether some reallocation was feasible in the sanctioned funds for roads, leaving the priorities to the discretion of the competent authorities. "The high court has served its high purpose of drawing attention to a public need and indicated a feasible course of action. Nothing further need to be done by the high court in this matter," the Supreme Court said. "The way we read the high court's order with the clarification indicated, it does not transgress the limit."

55. STATUS OF SC AFTER CONVERSION

Soosai vs. Union of India

The Supreme Court rules that SC members converting to Christianity are not eligible for the benefits given to the SC members as their disabilities and handicaps do not continue after conversion.

Facts: Soosai belonged to the Adi Dravida community and was a cobbler. He embraced Christianity. The Tamil Nadu Khadi and Village Industries Board surveyed the sites where cobblers were working and subsequently they were given free bunks. Soosai was not. On enquiry, he found out that the benefit was given only to SC members under a scheme to benefit them. The government order specifically stated that those who converted themselves to Christianity were not eligible for the benefit. It was because of the Presidential Order of 1950 which specifically declared that no person who professed a religion different from the Hindu or Sikh religions shall be deemed to be a member of the SC. The petitioner challenged the validity of the 1950 order on the ground that it violated the equality promised under Articles 14 and 15 of the Constitution and religious freedom under Article 25. Soosai argued that despite conversion, he belonged to his old caste, which was enumerated in the Constitution (SC) Order 1950. He was discriminated against only on the ground of religion which was against the Constitution.

Ruling: The Supreme Court dismissed the petition. It said that the main question in the case was whether a Hindu belonging to SC retains his caste on conversion to Christianity. When the 1950 order was issued by the President, he had before him material indicating that depressed classes of the Hindu and Sikh communities suffered from social and economic disabilities so gross that it called for constitutional protection. So the SC/ST tribes were listed in the order as enjoined in Article 341 of the Constitution. To establish that the order discriminated against Christians, it must be shown that they suffer from a comparable depth of social, cultural and educational backwardness within the Christian community necessitating intervention by the state. It was not enough

55. AIR 1986 SC 733

to show that the same caste continued after conversion. It must be established further that the disabilities they suffered under Hinduism continued in their oppressive severity in the new environment. Though some cursory references were shown to the court, no authoritative and detailed study with the present conditions of Christian society was placed on record. Therefore, the 1950 order could not be struck down as arbitrary and unconstitutional, the Supreme Court stated. When a violation of a fundamental right is alleged, the burden rests on the petitioner to establish clearly his allegation. This was not done in this case, the court said.

56. LIST OF BACKWARD VILLAGES HELD VALID

Atul Khullar vs. State of J & K

This judgement states that the list of villages which are declared backward for the purpose of reservation of seats for professional colleges can be revised from time to time.

Facts: The dispute centred around admission to medical and engineering colleges in Jammu and Kashmir. A large number of candidates who failed to get admission challenged the selection on several grounds, like viva voice tests and physical bearing of students as criteria. The argument relevant here is the one based on the selection of candidates from the backward areas category. It was argued that this was invalid as many villages, including those areas near the Actual Line of Control, were not originally included in the notification. Subsequently, candidates not belonging to backward areas have been selected under the reserved category. It was argued that the areas added to the category could not have been treated as backward areas.

Ruling: The Supreme Court rejected this argument. The addition of villages was made after the cabinet of ministers had considered the material placed before it and taken a decision thereon. Several committee reports were examined before arriving at the decision. Therefore, there was no arbitrariness in the decision. Moreover, the original list of backward villages could not be considered as final for all times. It was perfectly possible for the conditions of a village to change during the years, and it was quite conceivable

56. AIR 1986 SC 1224

that a village considered suitably developed at one time should deteriorate to the point of backwardness. Therefore, the original list was open to enlargement and there was good material on the basis of which more villages could be added to it.

Some candidates had given their addresses as Jammu, though they had attached tahsildar's certificates showing that they belonged to backward areas. The court stated that it took the certificates as true and did not want to examine each record. Their residence in the city appeared to be of a temporary nature. Such temporary stay in urban areas could not deny the candidates the benefit of reservation, the Supreme Court ruled. The final orders in individual petitions were based on several other arguments.

57. VICTORY OF RED TAPE AND FALSE CERTIFICATE

N.B. Rao vs. Osmania Medical College

This is an interesting case in which a student got a false certificate of backward caste and due to red taspism he continued in the medical college for four years. The high court thought it was too late to oust him from the college, though he had submitted a false certificate to get admission.

Facts: Rao got a social status report that he belonged to the backward 'Koppula Velma' community and on that basis sought admission to the medical college. He was admitted. Then the principal wrote to the Director of Backward Classes for confirmation of the social status. He wrote to other authorities, and after seven months, the authorities noted that Rao was not Koppula Velma by caste but belonged to the forward Velma by caste and his father was a 'Patel' who owned land and was well-to-do. So the principal issued notice to the student to show cause why his seat should not be cancelled. More procedures followed, which are not necessary to be detailed, though it makes interesting reading. Several years went by in the enquiry and occasional forays into the court. The arguments in the high court was mainly against the procedures followed at the enquiry.

Ruling: The Andhra Pradesh high court rejected the arguments, but in view of the fact that the student had already completed

57. AIR 1986 A.P. 196

major part of the five-year course, it "reluctantly" allowed the petition. The court also observed that the authorities were free to take appropriate actions against those who had issued false certificates and forged documents.

The high court noted that the student failed to bring witnesses and material to show that he belonged to the backward caste. When a person makes such a claim it is his duty to establish that he belonged to a backward caste. The certificates are prima facie valid, if they are not disputed. But when there are doubts over their genuineness, the burden of proof is on the person who makes the claim, the high court ruled. Thus the allegation of violation of the principle of natural justice was rejected. All materials relevant to the enquiry was given to the student.

The court also rejected the argument that once admission was given, the authorities were bound by the principle of equitable estoppel. It stressed that those "who tap the door of equity must touch it with unpolluted hands." Here, it was not so. Moreover, the provisional admission given to him earlier did not amount to unequivocal assurance that he would be confirmed in the seat.

The high court also criticised the way persons unfamiliar with the legal process were called upon to decide the issue (a senior professor of medicine), and red tapism tended to defeat the benign constitutional provisions for distributive justice.

58. BRAHMIN GIRL 'ADOPTED' BY LOW CASTE

A.S. Sailaja vs. Principal,, Kurnool Medical College

This is a case where a Brhamin girl was "adopted" by a person of a backward class, before applying for a medical seat in the reserved quota. The Andhra Pradesh high court found that the adoption was not genuine.

Facts: The petitioner was a Brahmin girl, brought up and educated by her natural father, an advocate. In her earlier examinations, she had not claimed that she belonged to the backward shepherd caste. But after obtaining her marks at the medical entrance examination, she made this claim with the support of the certifi-

58. AIR 1986 A.P. 209

cate of the village munsiff. According to her, she was adopted by a low caste man and therefore she could claim a seat in the backward classes quota. This was doubted by the authorities and thus she moved the high court.

Ruling: The high court dismissed her petition. It stated that though she appeared to have been adopted by the shepherds, which was prima facie proved by the registered document, the adoption was a motivated one. She did not assimilate herself in the backward class nor did she suffer any of its handicaps or ignominy. Therefore, she was not entitled to the benefits under Article 15(4).

The high court stressed that caste alone was not a determining factor in finding whether a class of citizens was backward. It is one of the considerations. If a person did not belong to a homogenous group with common attributes like status, rank, occupation, race and residence, the court should examine that person's status. It must see whether the person was trying to acquire the status by the process of law. If a Brahmin child was adopted at a tender age by a low caste person and brought up under lowly surroundings it could plead backwardness. But if a Brahmin child was adopted at a fairly advanced stage like 15 years, after enjoying the advantages of the higher caste, it could not claim to belong to the homogenous backward class.

The high court distinguished adoption under the Hindu personal law from one for the purpose of the Constitution. In order to get benefits under Articles 14, 15 (4) and 16 (4), the child must integrate with the low caste community, suffering all its handicaps. Therefore, registration under the Hindu Adoptions and Maintenance Act was of no avail in the present case, the court ruled.

59. TOUGH TESTS FOR RECOGNITION OF HARIJAN SCHOOL QUASHED

D.M.K. Public School vs. Regional Joint Director

In this judgement, the Andhra Pradesh high court says that a school run for the down-trodden people cannot be compelled to have all facilities insisted upon by the state education rules. The

59. AIR 1986 A.P. 204

court asked the authorities to grant recognition to the school, which was earlier denied.

Facts: A young SC advocate and his wife started an education society and an English medium school for SC/ST/Backward Classes children in Champapet village. The parents were rickshaw pullers or coolies. The school had over 100 students. When the petitioner sought recognition of the school, it was denied. Therefore, the writ petition was moved. The authorities submitted that the society was collecting fees from students and not keeping accounts. A complaint was made regarding this and the police had seized all the records. Further inspection of the school was prevented by slogan-shouting and protests. The school had no high standards of education or reputation; no facilities like playgrounds, laboratories, library or audio-visual equipment enjoined under orders issued by the government. The authorities recited 13 such deficiencies for denial of recognition.

Ruling: The high court rejected all these arguments and directed them to grant recognition to the school. It stated that in view of Article 45 of the Constitution, it was the duty of the state to impart education to children in the egalitarian, secular society. Right to education is a fundamental right of the backward classes. When it is the government's duty to establish school in the Dalit area, it was its duty to grant recognition to an existing one. It is well-known that rickshaw pullers and coolies live in abject poverty. "Their houses are not palaces, but huts with either semi-constructed ones or with some leaves or rags spread over the top, with no sanitary conditions, let alone drinking water." When a school is established in such a locality, it is well-nigh impossible to comply with all the conditions set by the government for normal schools. Insistence on the conditions would amount to denial of schools in Dalit areas. The conclusion is that officials have abdicated their constitutional duty (Article 46) and are oblivious to the historical as well as the existing facts. The legislature cannot foresee all eventualities. The rules made should be implemented in a "realistic and pragmatic" manner, and "in appropriate cases the officials should tailor their actions to relax them so as to subserve the purpose of the Constitution," the judgement stated.

60. RESERVATION FOR SCHOOL TEACHERS

Bharat Sevashram Sangh vs. State of Gujarat

In this case, the Supreme Court upheld the provision for reservation of teaching posts in Gujarat schools for SC/ST.

Facts: The Gujarat Secondary Education Act 1973 was assailed on several grounds. One of the provisions challenged was Section 34(1). It provided that 15 per cent of vacancies of teaching staff of a registered private school shall be filled up by SC/ST candidates. It was argued that this interfered with the managerial function.

Ruling: The Supreme Court dismissed all the arguments against the law, including the point relating to SC/ST. The court pointed out that a large number of teachers whose salaries are met by the grants given by the state under the grants-in-aid code are employed by their managements. The State should, therefore, have a voice in the method of recruitment. The state should also make provision for reservation of certain percentage of seats for SC/ST under Article 16(4) of the Constitution. The insistence on having teachers belonging to SC/ST is also in public interest. Children should be brought up in an atmosphere where there is an opportunity to mix freely with students and teachers belonging to traditionally disfavoured communities also. The opportunity to show reverence to teachers belonging to SC/ST will in the long run enable the child brought up in that atmosphere to shed the feeling of superiority over SC/ST. Section 34 serves this laudable objective. Even the teachers belonging to SC/ST must possess the requisite qualifications for the posts. Therefore, there was no illegality, the court ruled.

61. LOWER QUALIFYING STANDARDS FOR SC/ST

The Comptroller and Auditor General vs.K.S. Jagannathan

This case deals with relaxation of qualifying marks in respect of SC/ST for promotion. It is held that the candidates can move the high court if they are not given this benefit.

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60. AIR 1987 SC 494
61. AIR 1987 SC 537

Facts: The SC/ST employees working in the Indian Audit and Accounts Department, Madras, sought relaxation in marks for their promotion from selection grade auditors to section officers. In the examination they had failed to secure the aggregate minimum which was 45 per cent. Therefore, they moved the high court. The single judge dismissed their writ petition. The division bench, on appeal, allowed it and directed the authorities to give suitable relaxation. The authorities appealed to the Supreme Court which dismissed the appeal. The candidates were not represented either at the high court appeal or in the Supreme Court. The Supreme Court appointed a lawyer to argue their case and also awarded cost to them. The court registry was also directed to communicate the order at its cost.

Ruling: In this case, the SC/ST candidates had a right to move the high court as the instruction for relaxation, issued by the Department of Personnel and Administration to all ministries, were not followed by the government. The discretion conferred on the authority in matters of relaxation of qualifying marks in the case of SC/ST was a discretion to be exercised in the discharge of the constitutional duty imposed by Article 335 to take into consideration the claims of SC/ST consistently with the maintenance of efficiency of administration. The object of the Office Memorandum was to provide adequate opportunity of promotion to SC/ST members. By reason of Article 16 (4) SC/ST members are treated differently; it was legal.

The relaxed or lower qualifying standard cannot be fixed for all the time or for a number of years. It must be fixed for each examination because it has to be fixed taking into account the reserved vacancies remaining unfilled and the overall strength of the cadre and of the SC/ST strength in that cadre. The qualifying standard should be notified so that the candidates would know what the standard is.

62. EXCLUSION OF ST GROUP FROM STATE LIST

Sarish Chandra vs. State of Tripura

What can be done when a ST community is excluded from the benefits given to them under the Presidential Order? This case deals with such an instance.

62. AIR 1987 SC 1601

Facts: The petitioner, a resident of Tripura, claimed that he belonged to Laskar community which has been treated as ST within the state. According to him, the government, without any justification, delisted the community from ST category and issued instructions to all authorities to follow them. The high court dismissed the writ petition. Therefore, he moved an appeal in the Supreme Court.

Ruling: The Supreme Court stated that the record before it showed that the community was treated as ST. However, there was no clear inclusion of the community as such in a presidential order. The petitioner maintained that even in the absence of such specification, the community was enjoying the privilege as a sub-group under one of the notified categories. The Central Government informed the court that the representations made by the community to be included in the presidential order under Article 342 of the Constitution was being examined. The court said that if the community was not included in the presidential order, it would be open to the petitioner to take further steps available in law. But later, in AIR 1990 SC 991, the claim of the community was rejected after a review. The court said the presidential order excluding it was final.

63. DOES JUDICIARY DISCRIMINATE BETWEEN RICH AND POOR?

Bihar Legal Support Society vs. Chief Justice of India

This short judgement was the fall-out of a debate in the press that the Supreme Court was hasty in rescuing erring industrialists while the poor and the unprivileged can never hope to get justice at the same speed. A five-judge constitution bench defends the position of the Supreme Court.

Facts: It was alleged in the petition that a bench of the Supreme Court sat late at night on September 5, 1986 for considering the bail application of L.M. Thapar and Shyam Sundar Lal, noted industrialists. It was stated that the same anxiety must "permeate the attitude and inclination of this court in all matters where questions relating to liberty of citizens, high or low, arise," and

63. AIR 1987 SC 38

that the bail applications of "small men" must receive the same importance as the applications of "big industrialists". Therefore, it was prayed that other appeals against denial of bail should be taken up immediately.

Ruling: The court asserted that the appeals of "small men" are as much entitled to consideration as those of "big industrialists." In fact the Supreme Court had always regarded the poor and the disadvantaged as entitled to preferential consideration than the rich and the affluent. The reason is that the weaker sections have been deprived of justice for long, long years: they had no access to justice on account of their poverty, ignorance and illiteracy. On account of their socially and economically disadvantaged position, they lack the capacity to assert their rights and they do not have the material resources with which to enforce their entitlements and combat exploitation and injustice.

The question whether appeals against refusal of bail should be listed immediately or not is a question within the administrative jurisdiction of the Chief Justice. The court cannot give any direction on that behalf on a writ petition. The Supreme Court is not a regular court of appeal against orders of subordinate courts. Therefore, it should not ordinarily--save in exceptional cases--interfere with orders relating to bail, because in such matters the high court order shall be final.

64. PROMOTION FOR BUDDHIST CONVERTS IN POLICE FORCE

Gopalkrishna vs. State of Maharashtra

This judgement of the Bombay high court deals with the limit to reservation and carry forward and whether Buddhist converts are eligible for caste reservation.

Facts: Certain inspectors of police questioned the validity or interpretation of the Maharashtra government resolutions making reservations for SC/STs and Denotified Tribes/Nomadic Tribes in the category of inspectors of police and promotion from that category to that of assistant commissioners of police in Greater

64. AIR 1987 Bombay 123

Bombay. The judgement deals in detail with the resolutions and the factual aspects. But its significance is mainly in its findings on two aspects of the questions raised as summaried below.

Ruling: The court held that the state government was right in laying down norms for all government services in the state for representation to SC/STs and notified tribes. Determining adequacy of representation cadre-wise, or for each particular service, would lead to confusion and chaos. It rejected the argument that the police force is something special, intended as it is for the maintenance of law and order, and norms for higher officers should be laid down. The court said that though different services may have their own nuances, all services are equally important and there could be no discrimination among them.

Once the power to make reservation is exercised under Article 16(4) of the Constitution, a pointwise roster of vacancies must be brought into effect. A carry forward rule must be properly enacted. It should be so applied that for reservation for a particular year, the percentage of reservation should not exceed 50 per cent.

The judgement rejected the fear of the petitioner's counsel that if the roster system was followed and the limit of 24 per cent prescribed by the resolution was sought to be made unlimited, the result would be that by 1992 as many as 69 posts of ACPs in Greater Bombay would, at the cost of efficiency, be filled up by backward classes. The court gave a three-fold answer:- (a) reservation is not sought to be made unlimited, (b) inefficiency need not necessarily be associated with members of the backward classes, (c) Supreme Court judgements have favoured upon and repelled such attempts at prophecy. The Supreme Court said in AIR 1981 SC 298 that "the mystic maybe(s) do not scare us. The actual mustbe(s) will alert us."

Then the judgement dealt with the effect of conversion of SC member. It is correct that he ceases to be a SC member when he renounces Hinduism and embraces Buddhism. But what touches this intense human problem is whether Buddhist converts, despite their attempt to escape the shackles of backwardness foisted on

them by society, continue to be backward. The court said they did suffer backwardness "in their oppressive severity in the new environment of a different religious community." They were untouchables then and now. Nothing has changed, the stigma persists. The judgement quoted several study reports and documents to assert this view. Therefore, the reservation in favour of Buddhist converts was upheld and the petitions were dismissed.

65. CASTE CERTIFICATES OF BLOOD RELATIONS AS EVIDENCE

Devidas Hajare vs. State of Maharashtra

This case highlights the problem of bogus caste certificates issued by the authorities without proper verification. It also refers to harassment caused to genuine backward class members. In the matter of law, the Bombay high court rules that caste certificates of blood relations cannot be considered as conclusive proof to decide the issue.

Facts: The petitioner had two daughters and both of them were shown in the school register as belonging to the Lohar caste. Later he got the tahsildar's certificates to change the caste from Lohar to Gadi-Lohar, which is a nomadic tribe entitled to reservation in medical admissions. When the two girls applied under ST quota, the caste verification committee rejected their claim after interviewing the father and the girls. The following were some of the reasons:- The caste certificates were not in the proper form; the birth certificate was manipulated; the girls had never claimed the concessions to the ST before; they claimed that their occupation was carpentry while that of Gadi-Lohar are wanderers who work as polishers, tinkers and knife-sharpeners; the deities worshiped are different as well as the customs. They brought evidence to show that two of their distant cousins had got medical seats with ST certificates. So they also belonged to the same ST.

Ruling: The Bombay high court dismissed their petition, disbelieving their claim to ST certificates. It said that each case must turn on facts of that case. Prior orders one way or the other regarding relatives would be but one circumstance to be consid-

65. AIR 1987 Bombay 354

ered in a caste enquiry. But they cannot be conclusive either way. Caste certificates of blood relations cannot become conclusive proofs. At the most, such certificates of blood relations can be used as guidelines and/or a circumstance to be taken into consideration but along with the other evidence on record.

In this case, the court found that the caste certificates were bogus. The certificates of their cousins were of no use on the above reasoning. Moreover, the cousins also obtained bogus certificates, according to the court. "They, however, have been lucky in escaping detection and in getting admission to medical course."

Article 15(4) of the Constitution provides for reservation for backward classes. But "unscrupulous and dishonest" persons never fail to defeat these "massive and far-reaching endeavours made by a democratic nation to integrate an oppressed, depressed and excluded population into the mainstream of national life," the judgement stressed.

The court noted that executive magistrates were issuing bogus certificates and harassing genuine backward class members. It asked the government to take action against the authorities indulging in this practice. The government's undertaking to do so was noted in the judgement.

66. PERFORMANCE OF LOW-CASTE STUDENT

Subir Kumar vs. Indian Institute of Technology

A low-caste student, whose performance was consistently poor in a prestigious institute, can be asked to leave, says the Bombay high court in this judgement.

Facts: The petitioner, a low-caste youth, succeeded in getting admission to IIT in the reserved quota. He completed six semesters but was asked to leave because of his bad record. He left. But later he again appeared at the entrance examination and got admission. His performance, however, did not improve despite several warnings. So he was asked to leave IIT. He challenged this decision, mainly on technical grounds of rules and factual circumstances like his periods of illness. The IIT contested all these.

66. AIR 1987 Bombay 358

Ruling: The high court dismissed the petition, rejecting his arguments about denial of natural justice and failure to follow the rules. The court stated that IIT was a prestigious institution, and the people of India pay a heavy price to educate the pick of youth. Anyone who fails to come up to the standards laid down cannot, as of right, seek condonation of his lapses. A decision whether a student has fallen from the high standards set has to be taken by the authorities concerned. Courts, unless there be some flagrant violation of law or principle of fairness, are the least equipped to deal with problems of this nature, the judgement stated.

The test can never be technical compliance with this or that rule; an overall view has to be taken. In this case, the petitioner was given a fair opportunity. He just could not cope up with the expectations. This was no reflection upon his intellectual ability. Perhaps he would perform better in other spheres. But one seat could not be continued to be kept occupied by the wrong person when there was a long queue of waiting aspirants, the court concluded.

67. GUIDELINES FOR ISSUING SOCIAL STATUS CERTIFICATES

Kumari Madhuri Patil vs. Additional Commissioner

The importance of this Supreme Court judgement is in the 15 guidelines it had set on the issuance of caste and tribe certificates. This followed the confusion over a school certificate, which is a common feature all over the country.

Facts:- The petitioner's father's caste was shown as 'Hindu-Koli' in his school certificate. The petitioner got a certificate from tahsildar showing that she belonged to 'Mahadeo Koli', a ST in Maharashtra. The verification done at the medical admission stage showed that she belonged to Koli by caste, which was recognised as Other Backward Class, and not Mahadeo Koli. She relied upon similar certificates issued to her relatives. Her petition against rejection of her claim was dismissed by the Supreme Court, stating that her caste certificate was issued without proper verification.

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67. (1994) 6 SCC 241

Ruling:- The Supreme Court stated that admission wrongly gained or appointment wrongly obtained on the basis of false social status certificate necessarily have the effect of depriving the genuine Scheduled Castes or Scheduled Tribes or OBC candidates as enjoined in the Constitution of the benefits conferred on them by the Constitution. The genuine candidates are also denied admission to educational institutions or appointments to office or posts under a state for want of social status certificate. The ineligible or spurious persons who falsely gained entry resort to dilatory tactics and create hurdles in completion of the inquiries by the scrutiny committee. It is true that the applications for admission to educational institutions are generally made by a parent, since on that date many a time the student may be a minor. It is the parent or the guardian who may play fraud claiming false status certificate. It is, therefore, necessary that the certificates issued are scrutinized at the earliest and with utmost expedition and promptitude. For that purpose, it is necessary to streamline the procedure for the issuance of a social status certificates, their scrutiny and their approval, which may be the following.

1. The application for grant of social status certificate shall be made to the Revenue Sub-Divisional Officer, Deputy Collector or Deputy Commissioner and the certificate shall be issued by such officer rather than at the officer, taluk or mandal level.

2. The parent, guardian or the candidate, as the case may be, shall file an affidavit duly sworn and attested by a competent gazetted officer or non-gazetted officer with particulars of castes and sub-castes, tribe, tribal community, parts or groups of tribes or tribal communities, the place from which he originally hails from and other particulars as may be prescribed by the concerned directorate.

3. Application for verification of the caste certificate by the scrutiny committee shall be filed at least six months in advance before seeking admission into educational institution or an appointment to a post.

4. All the state governments shall constitute a committee of three officers, namely, (1) an Additional or Joint Secretary or any

officer higher in rank of the Director of the concerned department, (2) the Director, Social Welfare/Tribal Welfare/ Backward Class Welfare, as the case may, and (3) in the case of Scheduled Castes another officer who has intimate knowledge in the verification and issuance of the social status certificates. In the case the Scheduled Tribes, the research officer who has intimate knowledge in identifying the tribes, tribal communities, parts of or groups of tribes or tribal communities.

5. Each directorate should constitute a vigilance cell consisting of Senior Deputy Superintendent of Police in overall charge and such number of police inspectors to investigate into the social status claims. The inspector would go to the local place of residence and original place from which the candidate hails and usually resides or in case of migration to the town or city, the place from which he originally hailed from. The vigilance officer should personally verify and collect all the facts of the social status claimed by the candidate or the parent or guardian, as the case may be. He also should examine the school records, birth registration, if any. He should also examine the parent, guardian of the candidate in relation to their caste etc. or such other persons who have knowledge of the social status of the candidate and then submit a report to the directorate together with all particulars as envisaged in the proforma, in particular, of the Scheduled Tribes relating to their peculiar anthropological and ethnological traits, deity, rituals, customs, mode of marriage, death ceremonies, method of burial of dead bodies etc. by the concerned castes or tribes or tribal communities, etc.

6. The Director concerned, on receipt of the report from the vigilance officer if he found the claim for social status to be "not genuine" or "doubtful" or spurious or falsely or wrongly claimed, the director concerned should issue show cause notice supplying a copy of the report of the vigilance officer to the candidate by registered post with acknowledgment due or through the head of the concerned educational institutions in which the candidate is studying or employed. The notice should indicate that the representation or reply, if any, would be made within two weeks from the date of the receipt of the notice and in no case on request not

more than 30 days from the date of the receipt of the notice. In case the candidate seeks for an opportunity of hearing and claims an inquiry to be made in that behalf, the director on receipt of such representation/reply shall convene the committee and the Joint/Addl. Secretary as chairperson who shall give a reasonable opportunity to the candidates/parent/guardian to adduce all evidence in support of their claim. A public notice by beat of drum or any other convenient mode may be published in the village or locality and if any person or association opposes such a claim, an opportunity to adduce evidence maybe given to him/it. After giving such opportunity either in person or through counsel, the committee may make such inquiry as it deems expedient and consider the claims vis-a-vis the objections raised by the candidate or opponent and pass an appropriate order with brief reasons in support thereof.

7. In case the report is in favour of the candidate and found to be genuine and true, no further action need be taken except where the report or the particulars given are procured or found to be false or fraudulently obtained and in the latter event the same procedure as is envisaged in para 6 be followed.

8. Notice contemplated in para 6 should be issued to the parents/guardian also in case the candidate is a minor to appear before the committee with all evidence in his or their support of the claim for the social status certificates.

9. The inquiry should be completed as expeditiously as possible preferably by day-to-day proceedings within such period not exceeding two months. If after inquiry, the caste Scrutiny Committee finds the claim to be false or spurious, they should pass an order canceling the certificate issued and confiscate the same. It should communicate within one month from the date of the conclusion of the proceedings the result of enquiry to the parent/ guardian and the applicant.

10. In case of any delay in finalising the proceedings, and in the meanwhile the last date for admission into an educational institution or appointment to an officer post is getting expired, the candidate be admitted by the principal or such other authority compe-

tent in that behalf. Such admission or appointment should be only provisional, subject to the result of the inquiry by the Scrutiny Committee.

11. The order passed by the committee shall be final and conclusive only subject to the proceedings under Article 226 of the Constitution.

12. No suit or other proceedings before any other authority should lie.

13. The high court would dispose of these cases as expeditiously as possible within a period of three months. In case, as per its procedure, the writ petition/miscellaneous petition/matter is disposed of by a single judge, then no further appeal would lie against that order to the division bench but subject to special leave under Article 136.

14. In case the certificate obtained or social status claimed is found to be false, the parent/guardian/the candidate should be prosecuted for making the false claim. If the prosecution ends in a conviction and sentence of the accused, it could be regarded as an offence involving moral turpitude, disqualification for elective posts or offices under the state or the Union or elections to any local body, legislature or Parliament.

15. As soon as the finding is recorded by the scrutiny committee holding that the certificate obtained was false, on its cancellation and confiscation simultaneously, it should be communicated to the concerned educational institution or the appointing authority by registered post with acknowledgments due with a request to cancel the admission or the appointment. The principal etc. of the educational institution responsible for making the admission or the appointing authority, should cancel the admission/appointment without any further notice to the candidate and debar the candidate for further study or continue in office in a post.

Since this procedure could be fair and just and shorten the undue delay and also prevent avoidable expenditure for the state on the education of the candidate admitted/appointed on false social status or further continuance therein, every state concerned

should endeavour to give effect to it and see that the constitutional objectives intended for the benefit and advancement of the genuine Scheduled Castes/Scheduled Tribes or backward classes, as the case may be are not defeated by unscrupulous persons.

68. ORDER AFFECTING ADIVASIS' LIVELIHOOD

Fatesang Gimba vs. State of Gujarat

In this case, the Gujarat high court upholds the right of the Adivasis living in forests to get subsidised bamboo and sell them to dealers, after making traditional hand-made products.

Facts: Poor Adivasis known as Kotwalias and Vansfodias filed the writ petition complaining of harassment by forest officers to deprive them of certain privileges conferred by the state government. They claimed privilege in regard to collection of forest produce, including bamboos, for making 'toplas', 'supdas', 'palas' etc. for their hutments and livelihood. A businessman also joined them as he was prevented from removing these articles from the forest area without permit, as they were 'forest produce' under the Indian Forest Act. The Adivasis further alleged that the forest officers were forcing them to enter into a scheme under which the right to remove bamboos would be settled in favour of a private company at their cost. They even brought evidence to show that the forest officers had requested the railways not to book bamboo articles prepared by the Adivasis, though there was no rule to ban such consignment. The Forest Department contended that the petitioners were not Adivasis and therefore not entitled to move the petition. They were acting on behalf of private contractors, who encouraged reckless cutting of bamboos. This made the task of the department more difficult. Concessional bamboo was supplied to an Adivasi cooperative, and therefore individual permits are not given. The Adivasis, in turn, showed certificates to prove that they were indeed people living in the forest area.

Ruling: The Gujarat high court allowed the petitions and directed that bamboos shall be supplied to them at concessional rates. They shall be permitted to sell the articles to the dealers, not treating the items as 'forest produce.'

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68. AIR 1987 Gujarat 9

The high court stated that bamboo would fall within the definition of 'forest produce' but the items made from them by the Adivasis would not. The definition includes those which are produced by nature but not man-made products, like items made from bamboo chips in this case. Bamboos as a whole were forest produce, but the chips cease to be a 'produce' of nature and get merged into a 'product' brought about by human labour. If the product so made was commercially new and distinct, such articles could not be called forest produce, the court ruled.

69. STATUS AFTER TRANSFER TO ANOTHER STATE

Ghanshyam vs. L.D. Engineering College

This case highlights the difference in views possible among the high courts over the SC/ST status of a person who migrates to another state in the course of his/her job.

Facts: The petitioner belonged to the central telegraph department. He was earlier posted in Maharashtra, where his caste Halba is recognised as ST. His daughter had got admission in medical college in a reserved seat on account of the tribal certificate. Later he was transferred to Gujarat. When his son sought admission to a local engineering college, it was denied on the ground that Halba was not a ST in Gujarat though in Maharashtra it was so. Therefore, he challenged the decision and the guidelines which denied reservation to the student. It was discriminatory and violated the freedom of movement guaranteed in the Constitution, it was argued. The Gujarat government said that the recognition of the Halba tribe was valid only in Maharashtra and not in Gujarat according to its interpretation of Articles 341 and 342 of the Constitution.

Ruling: The Gujarat high court allowed the writ petition and directed the college to admit the student as belonging to ST community. However, some high courts have dissented from this view of the matter.

The high court stated that the words occurring in Articles 341 and 342 "for the purposes of this Constitution" should gov-

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69: AIR 1987 Gujarat 83

ern the subsequent phrase "in relation to that state or Union Territory" and not vice versa.

If the arguments of the college was accepted some unconstitutional conclusions would follow, like:- while protection under Article 15(4) is granted, their freedom of movement and right to reside anywhere in the country guaranteed under Article 19(1)(d) and (e) would be infringed. The protection would be available only if one surrendered the freedom of movement. This would frustrate social justice, the very purpose of protective discrimination. It would lead to a member of SC/ST breathing different "constitutional and legal air" in different parts of the country. There is nothing in the Constitution to indicate that SC/ST would get benefits only if they reside in a particular geographical area. The guidelines would be unworkable in the case of national institutions like the All-India Institute of Medical Sciences (Delhi) or Indian Institute of Management (Ahmedabad). Many regional SC/ST would not be found in the list of Delhi Union Territory. The high court thus allowed the petition. It noted that the Orissa high court had given a contrary decision (AIR 1969 Orissa 220).

70. PREFERENCE TO CHILDREN OF INTER-CASTE MARRIAGES

S. Hari Ganesh vs. State of Tamil Nadu

The Madras high court upholds the preference given in medical admission to children of inter-caste marriages between backward classes and forward communities, while lower preference is given to children of inter-caste marriages between backward classes.

Facts: In the category of reservation, the Tamil Nadu gave preference to children of inter-caste marriages to promote integration of society. Preference was given first to "children born of inter-caste marriage between SC/ST and forward communities" and then to "children born of inter-caste marriage between SC/ST and Most Backward Class/Backward Class communities." The two petitioners were born of an inter-caste marriage between backward classes. As the reservation rules talked about "inter-caste"

70. AIR 1987 Madras 55

marriages, they contended that the preference given to the children born of inter-caste marriage between SC/ST and forward classes was discriminatory and violative of Article 14 of the Constitution. Though reservation for children born out of inter-caste wedlock was constitutional, the preference given to children born of parents one of whom happened to belong to SC/ST was discriminatory, it was argued. The government contended that the reservation policy was permitted by the Constitution and was meant to encourage inter-caste marriages. The government had power to do so, it emphasised.

Ruling: The Madras high court dismissed the petition and upheld the reservation criteria as constitutional. It said that the state was bound morally and legally to give special recognition to marriages of the caste Hindus with members of SC/ST because such marriages remove imbalances in society to a greater degree than marriages between members of the backward classes. Any welfare state committed to remove untouchability and usher in equality must give preference to a marriage in which a member of a forward community or a backward class marries a member of SC/ST. Therefore, the state is entitled to give preference in the manner it has given in this instance. "In fact, the category of reservation was essentially in the nature of children born of inter-caste - Hindus and belonging to SC/ST," the court ruled.

The court rejected the argument made by the petitioners that preference should logically go to inter-religious marriages than to inter-caste marriages. The preference was given, said the court, to remove the evil of untouchability. Even though the Muslims and Christians fall outside the fold of the Hindu community, they do not suffer from the disgrace of untouchability. On the other hand, SC/ST are given less than human status, and reservation was given to remove this injustice, the judgement concluded.

71. STOPPING GRANT TO VOLUNTARY ORGANISATION

Social Work & Research Centre vs. State of Rajasthan

This is a case where the Rajasthan government abruptly

71. AIR 1987 Rajasthan 26

stopped grants to a non-government organisation working among tribal people. On its complaint, the high court directed the government to continue to give grants.

Facts: Mrs Srilata Swaminathan, who was working among the tribals through the organisation called Social Work and Research Centre, sent a letter to the Chief Justice of the high court, who treated it as a public interest litigation. She complained that the government had been sanctioning grants to the centre for the conduct of government schemes for the upliftment of the tribals in the Banswara district. The funds were utilised for helping the tribals with agriculture and education through certain projects. The accounts were also approved by the government. Suddenly the government stopped the grants. Letters to the authorities were of no avail. Hence the legal action.

The high court issued notice to the concerned authorities and appointed a lawyer free of cost to argue the petitioner's case. It was alleged that the grants were stopped in a mala fide manner. The centre showed its record of voluntary service to prove its bona fides. The government, on the other hand, stated that some projects were not sanctioned and so grants could not be given. It was also stated that according to intelligence reports, Mrs Swaminathan and her husband were indulging in activities prejudicial to the interest of the state. She was "practising her designs in the disguise of rural social development activities." Grants were given as a concession and organisations had no legal or fundamental right to them. The petitioners countered the charges against them by stating that their prejudicial activities should be published if there was any truth in them.

Ruling: The high court allowed the petition and directed the government to release the grant immediately. It pointed out that the duties enjoined on the state by the Directive Principles of State Policy in the Constitution cannot be fulfilled by the government alone. Therefore, the government, leaders and the Planning Commission have been emphasising the role of voluntary organisations. Only through them the people can be involved in welfare programmes. The petitioner is one such body. The sanctions were stopped without giving it a hearing, which was wrong. If the

government wanted to stop the grants, the petitioner should have been informed in the beginning of the financial year well in advance, so as to take a decision whether it should continue with the projects in hand.

Though there was no legal right to get grants, and the government has discretion in this field, "the court cannot close its eyes and it is too late to contend that the high court should not interfere under Article 226 of the Constitution unless there is violation of any legal or fundamental right." The Supreme Court, in a number of cases, has held that the high courts have a duty to see that the government functions in accordance with the principle of natural justice and acts fairly while passing administrative or discretionary orders, the judgement stressed. In this case, the petitioner was not given a hearing before stopping the grants. It was a clear violation of the basic principle of natural justice. If there was any reason, it should have been disclosed. On the other hand, they were continuing to receive grants and the projects were undertaken by them on the bonafide belief that the grants would continue. Therefore, the government's action was most unfair and unjust, the judgement concluded.

72. IAS RECRUIT CAUGHT IN CASTE CONFUSION

State of AP vs. Nagam Chandrasekhara

The question whether a particular community belonged to the Scheduled Caste category in AP was the issue here. Caught in the controversy was an IAS recruit, who was accused of producing a false certificate to claim a reserved seat.

Facts: Chandrasekhara was selected in the IAS against a vacancy reserved for SC. That was done on the basis of a social status certificate produced by him certifying that he belonged to the Beda Jangam community, who were hunters of small animals, and who were recognised as SC in the state. After his selection, a representation was made to the Central Government by a local Ambedkar Mission alleging that the youth belonged to the Jangam caste which was a backward caste but not SC. The Centre for-

72. AIR 1988 SC 1309

ward the complaint to the state government which conducted an enquiry into the matter. It came to the conclusion that he belonged to Beda Jangam, which was a SC. Again a representation was made by the State SC Welfare Association that some persons belonging to Jangam community had obtained false certificates that they belonged to Beda Jangam community. Another enquiry was conducted by the government which concluded that Chandrasekhara did not belong to SC. The government cancelled his social status certificate. So he was not called for IAS training. He challenged the order in the high court. The court set aside the order stating that the enquiry was held behind his back and he was not given opportunity to cross-examine witnesses. The state and central governments appealed to the Supreme Court.

Ruling: The Supreme Court dismissed the appeals affirming the high court view. The enquiry officer made enquiries from several persons without notice to Chandrasekhara so that he could cross-examine them. The enquiry officer violated the terms of enquiry. He should have given notice to Chandrasekhara and recorded statements in his presence, the Supreme Court said. It may not be necessary for the enquiry officer to call in all witnesses. He would be justified in declining to call any witness whose evidence in his view was bound to be repetitive or irrelevant or not of any assistance. The officer may also limit the right of cross-examination. But he must see to it that the principles of natural justice and fairplay are observed. The Supreme Court directed yet another enquiry into the allegation.

73. LOWER QUALIFICATION FOR SC/ST UPHELD

Aarti Gupta vs. State of Punjab

Courts in the past had to decide whether the government can reduce the qualifying marks if sufficient number of candidates from the reserved category are not available. There were some apparently contradictory judgements of the high courts on this point. The Supreme Court gives a final decision to be followed by the high courts.

Facts: According to the first notification of the Punjab Govern-

73. AIR 1988 SC 481

ment, SC/ST candidates had to secure only 35 per cent marks in the competitive exam to qualify for medical admission. Hundred seats out of the total were reserved for SC/ST candidates. But only 32 of them qualified. Therefore, the general candidates had a claim to the vacant seats. However the President issued a notification reducing the minimum percentage from 35 to 25 per cent. This was challenged by the general candidates in the high court, which dismissed their petition. Hence the appeal to the Supreme Court.

Ruling:- The Supreme Court rejected the argument that the Medical Council of India prescribed 40 per cent as the minimum and universities could not reduce it further. Quoting an earlier Supreme Court judgment on this point [State of M.P vs Nivedita Jain, (AIR 1981 SC 2945)] the court pointed out that the authority may prescribe the eligibility of candidates for admission. As to how the selection has to be made out of the eligible candidates is a matter which depends upon circumstances prevailing in a particular state. Here the council has no say.

It was further pointed out that in the Nivedita Jain case the state government fully deleted the prescription of the percentage of marks in the selection examination. "That was certainly a worse situation than the one before us. Yet that action was upheld," the judgement underlined.

The court also rejected the argument that the reduction of marks was arbitrary and against the principle of estoppel. The government had intended that 100 seats would go to SC/ST. When enough candidates were not available, the marks were reduced. The state government has explained the circumstances in which the step was taken. The court accepted it and dismissed the appeal. The court, however, stressed that the standard of medical profession should not be compromised. The government and the Medical Council should cooperate to maintain high standards, the judgement stated.

74. PREFERENTIAL TREATMENT IN TENDERS

Joy Kanta Hira vs. State of Assam

This judgement upholds the preferential treatment given to members of the weaker sections of society in the matter of acceptance of tenders for a marketplace.

Facts:- The petitioner, a member of the SC in Assam, applied for settlement of a market pursuant to a tender notice. Some others also applied. The tender was given to one Das, whose bid was for Rs 2.49 lakh. The petitioner's bid was for Rs 2.31 lakh. There were other bids for amounts like Rs 2.83 lakh and Rs 2.81 lakh, which were rejected on other grounds. The petitioner claimed that he should get the tender because his bid was within the range of 7.5 per cent of the highest bid, and therefore he was entitled to preferential treatment to weaker sections granted by a state government memorandum. Das submitted that the preferential treatment was applicable only for bids upto Rs 50,000 and here the bid was above that amount. It was also argued that the highest bid was Rs 2.81 lakh and therefore Hira's bid did not fall within 7.5 per cent of that.

Ruling:- The Gauhati high court rejected these arguments and asked the government to reconsider the claim of the petitioner after hearing the parties.

The court held that if the bid of the backward classes was within the range of 7.5 per cent, then keeping in mind the principle of distributive justice, the bids of the preferred classes within that range have to be considered. The principle of compensatory discrimination has been adopted keeping in mind the disparities between the different social strata in the country. It required that the backward classes should be compensated. "If that be called discrimination, it must be tolerated as compensatory discrimination," the judgement explained. It quoted AIR 1985 SC 389 where the principle was discussed by the Supreme Court in support of this stand.

On the facts of this case the court indicated that the petitioner's bid could have been within the preferential treatment. If that

74. AIR 1988 Gauhati 24

was not done, simply by giving an exorbitant or reckless bid and thus keeping the highest bid beyond the preferential range of the bids given by the backward classes, they would be deprived of the preferential treatment. The purpose of the rule would thus be frustrated. If a person abandons a bid, it should not be counted for preferential treatment purposes. In this case the court asked the government to reconsider the petitioner's bid in the light of this interpretation.

75. PARLIAMENT CAN CHANGE AREA RESTRICTIONS

Gujarat Dalit Civil & Constitutional Rights Pratipadan Samiti

vs

Union of India

The Gujarat high court states in this judgment that a SC recognised in part of the state can be recognised in the whole state if Parliament makes a rule to that effect for following a report of the commission set up for that purpose.

Facts:- Earlier, the Mochi community of Gujarat was recognised as SC only in two areas, Dangs and Umbergaon, but this rule under the Constitution (SC) Order 1950 was amended in 1976. After the amendment Mochis in all parts of the state were recognised as SC. This amendment was challenged as ultra virus of Arts 14 and 341 (2) of the Constitution as those who had not suffered untouchability were also included in the amendment.

Another petitioner was an individual belonging to the Rohit (SC) community. He was a candidate for the state statistical service in the reserved quota. But he was not selected because a Mochi candidate from outside Dangs and Umbergaon areas was selected in the SC quota. Therefore, he challenged the amendment which enabled the successful candidate to get the job. Another petitioner was a candidate for a municipal election from a ward reserved for SC. He challenged his opponent's claim to SC status on account of the disputed amendment.

Ruling:- The high court rejected all the petitions and upheld the validity of the amendment in a detailed judgment tracing the histo-

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75. AIR 1988 Gujarat 197

ry of the local castes and the case law. The court said that Art. 366 (24) defined Scheduled Castes. Any caste included in the list by Parliament under Art 341 is deemed to be SC. "The wisdom of Parliament in that respect cannot be the subject matter of any further interpretation." The statement of Objects and Reasons in the SC/ST Orders (Amendment) Act 1976 spelt out the exercise undertaken by Parliament before it passed it. The procedure had been strictly followed in including the Mochi community in the state as SC. The power was not exercised by Parliament arbitrarily. The purpose of the law was to remove area distinction for one community which was otherwise treated differently in different areas within the same state. It was meant to remove the hardship they experienced in social relationship between them simply because they resided in different areas of the same state. Therefore, it was within Art 14. Moreover, the wisdom of passing the law after getting a report from the appropriate commission could not be questioned.

76. REDUCTION OF QUALIFYING MARKS FOR SC/ST

Prakash Kiran vs. State of Bihar

When there were not enough SC/ST candidates for professional courses, the Bihar Government reduced the qualifying marks. The high court ruled that the action was valid.

Facts:- The state government reserved 125 seats for SC/ST. In the selection test, enough candidates were not available. Therefore, the qualifying mark was reduced from 40 per cent to 35 per cent for SC/ST. This was challenged by the candidates who were displaced by this decision. They called it arbitrary, violative of Articles 14 and 15(1) of the Constitution and hit by the principle of estoppel. It was argued that in several judgements of the Patna high court, it had held that the government was estopped from changing the basis of selection [AIR 1980 Pat 1].

Ruling:- The court held that how the selection to the courses should be made out of the eligible candidates was a matter which depended upon the circumstances and conditions prevailing in a particular case. The high court relied upon the *Nivedita Jain* case

76. AIR 1989 Patna 235

[AIR 1981 SC 2045] and the *Aarti Gupta* case [AIR 1988 SC 481] to arrive at its conclusion. Following those judgements, the high court rejected the argument that the reduction of marks was arbitrary. "Much water has flowed" since the judgement of 1980 quoted by the petitioners was delivered. The Supreme Court judgements have overruled the opposite view, it was emphasised. In its order, the court asked the government to advertise in the newspapers the vacancies available and fill them up according to the merit list.

77. RESERVED SEATS IN GRAM PANCHAYAT POLLS

Communist Party of India vs. State of Maharashtra

This case deals with reservation for ST in panchayat elections and the basis on which seats are reserved in Maharashtra.

Facts:- The CPI and an organisation known as Adivasi Arakshan Sanrakshan Samiti formed to promote the rights of ST in Zilla Parishads and Panchayat Samitis challenged the amended definition of the expression 'population' in the State Zilla Parishads and Panchayat Samitis Act as arbitrary, discriminatory and violative of Article 14 of the Constitution. According to the definition, "Population means the population as ascertained in the 1971 Census until the relevant figures for the first Census taken after the year 2000 have been published." The second question raised by the petitioners was that even if the new definition of population was valid, reservation of seats for ST in the elections based on the population figures ascertained in 1971 would mean the population figures of the original Census of 1971 as modified by SC and ST Order (Amendment) Act 1976.

Ruling:- The petitions partly succeeded. The Bombay high court held that the new definition of 'population' was not violative of Article 14 and was not liable to be struck down. It was open for the government to adopt the population figures of 1971 Census in forming electoral divisions and electoral colleges for panchayat elections. However, it was held that so far as the population figures of 1971 Census in regard to SC/ST are concerned, they

77. AIR 1989 Bom 29

would be the figures for the said Census as notified under the 1976 Act.

The court emphasised that the right of being properly represented was neither a common law right nor a constitutional right but a creation of the statute itself and was regulated by it. That right is not an untrammeled right as the representation by the elected members solely on the test of population figures cannot indefinitely increase, but is restricted to a particular number of seats to be determined by the state government. The expression "as far as reasonably practical" in the Act indicates the limitation of the alleged right of representation on the basis of population figures. The nature, extent and the manner of representation is a matter solely within the discretion of the legislature. Therefore, the expression was not violative of Article 14 on the ground that it artificially froze the population figures upto the first census after 2000 A.D.

78. NOMADIC TRIBE'S CLAIM FOR INCLUSION IN STATE LIST

Tanuja Rajpal vs. State of Maharashtra

Here the question was whether a nomadic tribe from Sindh had a claim to be included in the Maharashtra list of backward classes. Sindh was part of the Bombay Presidency before Independence.

Facts:- The petitioner challenged the decision of the Caste Scrutiny Committee holding that she had failed to prove that she belonged to 'Bawa' tribe in Maharashtra. She claimed that she belonged to Hindu Bawa nomadic tribe, which was originally recognised as 'Other Backward Class' in Sindh, West Pakistan. After partition, members of the Sindhi community migrated to India. They migrated with their traditions and castes. Therefore, they had social and ethnic links with Gosavi or Bawa community notified by the Maharashtra government as nomadic tribe. Even after migration, the caste remained unchanged, it was argued. On the other hand, the government argued that whenever it wanted to include any caste or tribe from Sindh, a specific mention had been

78. AIR 1989 Bom 101

made on that behalf. The Bawa community was not in any way ethnically connected with communities known as Bawas, Bairagis or Gosavis from Maharashtra.

Ruling:- The Bombay high court set aside the order of the Scrutiny Committee and asked it to decide the issue afresh. The judgement stated that there was no doubt that Sindh was part of the Bombay Presidency. Merely because some tribes from Sindh were mentioned in the notified list, it did not mean that the others were automatically excluded.

It is not possible to lay down any general criteria which would apply to all cases before the scrutiny committee. A variety of circumstances and peculiar features of each case cannot be identical with those in another. There are no legal litmus tests to determine the question, the judgement said. Evidence relating to the origin, old traditions, customs, festivals, gods and goddesses, language, mother tongue, racial features, traits and characteristics of the community, surnames, and occupation are all relevant for identifying the person and his caste. There is no mathematical formula to arrive at a definite answer; it must depend upon the totality of the circumstances brought on record.

In conclusion, the court asked the government to make a fresh survey of the tribes and revise the lists. The ultimate goal is to assimilate them into the mainstream of society and not to preserve them as human specimen. Meanwhile the government should also see that those who did not belong to the tribes did not rob the benefits given to genuine tribals.

79. SC/ST STATUS VALID ONLY WITHIN STATE

Tapan Kumar Roy vs Convener

This judgement of the Andhra Pradesh high court makes it clear that the President's declaration of a SC/ST within one state is not valid in another state. Each state has its own list of SC/ST. There is no all-India list.

Facts:- There are two cases. In the first one, a family belonging to former East Bengal migrated to West Bengal during the Parti-

79. AIR 1989 AP 132

tion, and then to Andhra Pradesh, where the head of the family found a job. They belonged to 'Namasudra', an untouchable caste. There are few Namasudras in AP. They are not notified as a SC by the President under Article 341 of the Constitution in relation to AP. When the son in the family sought admission in a professional college, it was denied as his caste was not in the notified list for AP. Therefore, the denial of seat was challenged. The second case was almost identical except that the candidate belonged to a ST notified by the President in relation to Bihar. The family was settled in AP, and the son wanted a seat in a medical college. But AP did not recognise his 'Kharia' tribe. So he moved the high court.

Ruling:- The high court rejected both their petitions with detailed reasons. It said that the Constitution recognised only state lists for SC/ST. The President declares the lists under Articles 341 and 342, but he does it only "after consultation with the Governor" and "in relation to that state". The President cannot notify an All-India SC/ST list. Therefore, a SC/ST declared as such in one state need not necessarily be treated so in another state.

The states cannot prepare their own lists. Therefore, children of central government servants belonging to SC/ST will not be able to claim benefits of Article 15(4), which are open to them in the parent state, in the states to which they are transferred unless the Presidential notification notified them as SC/ST in the new state.

The court rejected the argument that this interpretation would offend a citizen's fundamental rights to move freely throughout the country guaranteed under Article 19(1)(c). Article 21 also would not be violated. Their right to movement, or their right to life and personal liberty, have not been curtailed in any way. The real question was the one relating to their constitutional status which can be enjoyed only by and under a Presidential notification. The court recognised the hardships of those who chose to leave their home state and work in another state. Their dilemma is to stay in the home state and enjoy the benefit or "to renounce those props and stand on one's own legs and fight the battle of life from an unequal position moving throughout the country."

80. EXTRA MARKS FOR BACKWARD AREA ILLEGAL

Jawant Singh vs State of Haryana

In this case, the Punjab and Haryana high court holds that it was arbitrary and unconstitutional to give additional preference to candidates from a particular area.

Facts:- Candidates for admission to Diploma in Education course challenged the selection to a government institution on several grounds. One ground for reservation was 'backward/rural' area the candidate came from. It was alleged that candidates from Mewat area were given 10 additional marks. The government's reply was that preference/priority was given to candidates from Mewat area because it was a backward area. It did not have adequate representation in the field of education. It was hard to find teachers to serve in the area.

Ruling:- The high court rejected this argument and quashed the selection of candidates. According to the merit list, none from outside Mewat had been selected. Allocation of 10 marks to Mewat candidates gave them a jump of 200 marks over others. This was arbitrary. The court followed AIR 1968 SC 1012, AIR 1971 SC 2303 and AIR 1982 SC 1301 in this case.

81. ENTRY OF UNTOUCHABLES INTO TEMPLE ALLOWED

Surya Narayan Choudhary vs. State of Rajasthan

The Rajasthan high court permits the entry of Harijans to a temple without purification ceremonies, on a public interest petition.

Facts: Two advocates filed this writ petition to highlight the hostile discrimination practised against the Harijans in the matter of entry into the public temple of Shri Shrinathji at Nathdwara. They sought discontinuation of the practice and punishment of offenders. The petitioners had planned to visit the temple on Gandhi Jayanti Day in 1988 taking some Harijans. They asked the court to direct the government to allow entry without any hindrance.

80. AIR 1989 P & H 59
81. AIR 1989 Rajasthan 99

According to them, Harijans were permitted entry only after being purified by requiring them to wear 'Kanthimala' and sprinkling them with Ganga water and giving them Tulsidal. It was alleged that these amounted to practice of untouchability, banned by the Constitution. The state government submitted in reply that it was committed to eradication of untouchability and it would discharge its duty. It added that the proposed march should not disturb the peace.

Ruling: The high court disposed of the petition with necessary directions in favour of the Harijans. It quoted Article 17 of the Constitution abolishing untouchability, the Untouchability (Offences) Act 1955 renamed as the Protection of Civil Rights Act, Article 35 (1) (ii), Article 38 and 46 which deal with the present problem.

The court pointed out that under the Nathdwara Temple Act, the state government had the power of general superintendence over the temple administration. Therefore, it could prevent infringement of constitutional or other legal provisions. It had a duty to prevent hostile discrimination, the court held.

It further ruled that every devotee, including the Harijans who want to enter the temple, shall be permitted to do so in accordance with the general practice. Harijans shall not be subjected to additional conditions. The purification ceremonies shall be discontinued, as it violated Articles 14, 15 and 17. "The government must also take strict steps to ensure that there is no further mockery of this constitutional guarantee and the offenders, if any, are promptly dealt with in accordance with law."

The government's undertaking was noted and it was asked to keep law and order. On the other hand, those who claimed public interest were asked not to "use the Harijans as pawns on the political chess board."

82. MIGRANTS CANNOT BENEFIT IN NEW STATE

Marri Chandra Rao vs Dean, Medical College

Where a person belonging to a caste or tribe in one state

82. 1990 (3) SCC 130

migrates to another state, can he claim the benefits under the Constitution in the new state? This question was rising again and again in the high courts. These courts were giving different rulings on this issue. Therefore, the question was decided by the Supreme Court in this judgement, decided by the constitution bench. The Supreme Court denied the benefit to the migrants. The present Supreme Court ruling has overruled all high court decisions taking the opposite view. Those who want to read the conflicting high court rulings may refer to AIR 1969 Orissa 220, AIR 1989 Bombay 138, ILR 1976 P&H 769.

Facts:- Marri Chandra was born in Andhra Pradesh and belonged to Gonda (ST) community. His father got a job in a Government of India undertaking on the basis of ST certificate and was posted in Bombay. Marri was then nine years old. He studied in Bombay. After his school studies, he sought admission to a medical college in the ST quota, which was denied. ST candidates with less marks were admitted in the reserved seats as they belonged to Maharashtra. This was based on the state government decision that only those SC/ST members who were resident of the state before 1950 would be eligible for the quota. This was challenged by the student.

Ruling:- A five-judge Constitution bench of the Supreme court rejected the contention that the new state should also recognise the SC/ST certificate and grant benefits according to it. He was denied admission to the medical college. The court interpreted Articles 14, 15, 16, 341 and 342 of the Constitution to arrive at this conclusion. The benefits are given to SC/ST in one state to compensate for the denial of opportunities in the past. At the same time, the Presidential Order specifying SC/ST caste in one state must be taken as "in relation to that state". Any of those SC/ST persons who go to other states should ensure that they make way for the disadvantaged in those areas. "In other words, Scheduled Castes and Scheduled Tribes, say of Andhra Pradesh, do require necessary protection as balanced between other communities. But equally the Scheduled Castes and Scheduled Tribes, say of Maharashtra in the instant case, do require protection in the State of Maharashtra, which will have to be in balance to other commu-

nities. This must be the basic approach to the problem," the judgement said.

83. URBAN HOMES FOR WEAKER SECTIONS

Shantistar Builders vs. Narayan Totame

This is an important judgement referring to houses for the weaker sections. Though the case arose from Bombay, the Supreme Court directions regarding Urban Land (Ceiling and Regulation) Act 1976 have relevance to all states.

Facts:- The urban land ceiling law provides for exemption from surrender of excess land under certain circumstances. Section 21 of the Act is one such instance. Under this, a person holding excess urban land can get exemption if he declares that "such land is to be utilised for the construction of dwelling units for the accommodation of the weaker sections of society" in accordance with any scheme approved by the state government.

The land in dispute in this case was in Bombay city and a declaration under Section 21 was made by certain persons holding vacant lands in excess of ceiling limits. However, certain persons alleged that the government exemption granted to them was wrong.

According to them, the builder who had promised construction of houses for the weaker sections to get exemption had violated the conditions for getting the exemption. The need of the weaker sections of society was not being attended to and a big racket had been formed by real estate speculators to eliminate the economically weaker sections and to make unauthorised and illegal profit out of such transactions. They also challenged the sanction of escalation of prices demanded by the builder. It had further been alleged that applications from genuine persons belonging to the economically weaker sections have been overlooked and persons not entitled to the benefit have been registered by the builders. The builders are in collusion with racketeers, it was alleged. The high court did not go into the factual aspects of the dispute, but laid down some guidelines for "future monitoring of the scheme." The directions were given only with reference to the

83. AIR 1990 SC 630

particular scheme. The high court remarked that "no directions by the court can be given generally without considering the difficulties of the government." Against these directions, the builder appealed to the Supreme Court. The apex court gave further directions with respect to the Bombay scheme, but left it open to weaker sections in other states to seek similar reliefs from the court.

Ruling:-The judgement took note of the problem of the migration of the rural masses to urban areas which led to housing shortages and related problems. Section 21 of the Act was one of the methods to help the 'weaker sections' in getting houses. But who would qualify to be called 'weaker sections' was left out by the law-makers. The value of the rupee has gone down meanwhile, and black money is rampant. In order to protect the fundamental right to a decent living guaranteed under Article 21 of the Constitution, greater social control is called for. The exemption granted under the land ceiling law should be properly monitored. "We therefore, commend to the government to prescribe appropriate guidelines laying down the true scope of the term 'weaker sections of society' so that everyone charged with administering the statute would find it convenient to implement the same," the judgement said.

In order to settle the several disputes over the applications for houses and allotment, the court laid down some guidelines. Among them:- 1) Allotment shall be on the basis of one family--one flat; 2) Government nominees under the scheme must belong to the weaker sections, and subject to the first guideline 3) Every builder shall keep a register of applicants chronologically registering them. It should be upto date and open for inspection 4) The court laid down a means test to be eligible for the houses (Rs 18,000 per family) 5) A committee shall be appointed to oversee the scheme, taking into account the allegations of the weaker sections.

The judgement concluded with an observation giving liberty to the weaker sections in other states to obtain similar orders with necessary modifications.

84. DISPUTE OVER SCHOOL CERTIFICATE

Aparna Bhaye vs. State of Maharashtra

This is a case of conflicting certificates about the status of a candidate for medical admission. She lost in all legal forums, including the Supreme Court, as her father's certificate was taken as the authentic one.

Facts: The student applied for medical admission in Bombay on the footing that she belonged to the ST of "Mahadeo Koli". In support, she tendered certain caste certificates. According to the rules, her application was referred to the scrutiny committee, an expert body for determining caste claims. The petitioner also submitted the SSLC of her father. When the committee sought for his primary school certificate, he failed to produce it. So the committee conducted its own enquiry. It found that his caste in the primary school record showed that he belonged to "Son Koli". This record was made in 1945, when there was no special advantage which the Mahadeo Koli tribe enjoyed over the members of Son Koli caste. The committee attached great probative value to the primary school certificate of the father made at a time "when no question of making any manipulation arose." It rejected the student's claim as it was inconsistent with the records relating to her father. The decision was upheld by the Additional Commissioner for Tribal Development, Maharashtra. Her writ petition in the Bombay high court was summarily dismissed. Therefore, she appealed to the Supreme Court.

Ruling:- The Supreme Court dismissed the appeal saying that it could not find fault with the committee which placed great reliance on the entries in the primary school of the father. It was an admitted fact that Mahadeo Koli was a ST whereas Son Koli was a caste. The primary school entry was made at a time when there was no reason to make a wrong statement about the caste or tribe to which he belonged.

A new argument was raised in the Supreme Court that Son Kolis were a section of the ST of Mahadeo Koli. The court said that a new argument could not be raised in the appeal. Moreover

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84. AIR 1990 SC 2250

in the list of Backward Classes issued by Maharashtra, Son Kolis were shown as belonging to 'other backward classes.' The records did not show that Son Kolis were a section of ST of Mahadeo Koli.

The petitioner showed a 1944 publication where Kolis were described as a tribe. But the court observed that in the old publication, no distinction had been drawn between castes and tribes. Therefore, it did not tilt the issue. So the appeal was dismissed. [See 1994 (3) Scale 935 for guidelines issued on caste certificates]

85. FOSTER PARENTS' TRIBE IRRELEVANT

Vajrakalaya Ramani vs. Sub-Collector

This is a dispute over the status of a girl who claimed that she belonged go a scheduled tribe. The Andhra Pradesh high court directed enquiry into the matter and found that she was not a tribal, though she was brought up by a tribal.

Facts:- The girl claimed that she belonged to a tribal community, as she was born during the association of her mother with Sriramulu, who is a tribal. The court directed an enquiry and it received a report. The mother of the girl gave a statement that she was deserted by her legally wedded husband along with the girl and she came and stayed with Sriramulu. The statement of the mother further showed that at the time when she was discarded by her husband, the girl was about three months old.

Ruling:- On the facts of the case, the high court ruled that when the girl was born during the wedlock with a non-tribal, it could not be said that the girl could be treated as a tribal. The mother's statement before a competent officer must be believed, and not that of the father.

The girl's counsel raised a further argument that after the mother was discarded by her husband, the girl was brought up by the tribal. Therefore, she must be given the status of the tribal. The court rejected her argument.

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85. AIR 1990 AP 271

The judge stated: "I am unable to agree with this contention. In determining the status of the parties, the status of the parents alone has to be taken into consideration, but not the status of the foster parents." The writ petition was, therefore, dismissed.

Another important case regarding the claim of tribe came up in the Supreme Court in Ramavatar vs State of Bihar [JT 1997(5)SC 45]. The petitioner claimed promotion on the basis that he was a tribal. The court asked him to produce his genealogy. After examining it, the court rejected his claim, observing that it was "highly doubtful and beyond comprehension.".

86. STATUS OF MIGRATING TRIBALS

Rajesh Patel vs. State of Maharashtra

This judgement of the Bombay high court deals with the status of a tribal migrating from one state to another. Can one state put a restriction saying that only those who had migrated before a particular date would be recognised as ST? The high court says such curbs are unconstitutional.

Facts:- Rajesh belonged to the Bhil tribe, who are spread in several north Indian states. His parents migrated from Gujarat to Bombay in 1961 and settled down with a job and own flat. Rajesh was brought up in Bombay. The problem arose when he sought medical admission on the basis of his tribal status for the reserved seat. He claimed that Bhils were recognised as ST in both Gujarat and Maharashtra. But a seat was refused in view of a Maharashtra Government resolution under which there was a distinction made between persons migrating to Maharashtra prior to 6.9.1950 and after that. Under that instruction, the boy was eligible for the benefit only in Gujarat, and not in Maharashtra. Therefore, the validity of the instruction was challenged through a writ petition.

Ruling:- The high court allowed the writ petition and declared that Rajesh was of Maharashtra domicile, whether reckoned by his upbringing or that of his father's history. The government was asked to process his application for medical admission. The government instruction was struck down as violative of Arti-

86. AIR 1990 Bombay 114

cles 342, 14 to 16 and 19 of the Constitution. Excerpts from the judgement:

The founding fathers being aware of the disabilities from which certain sections of people suffered, took care to incorporate in the Constitution provisions designed to provide compensatory discrimination in favour of these sections. Groups to be recognised as such tribes have to figure in a notification which the President issued in consultation with the Governor. Parliament can by law amend this notification whether by inclusion or exclusion of any group. Barring this method, the presidential notification could not be varied--not even by such a subsequent notification.

The power to include or exclude from the enumeration of ST under the Presidential order in 1050 vests only in Parliament. This power cannot be encroached upon by the state government in the guise of administrative instructions. The power to enumerate ST vested in the President and the notification containing such enumeration can be amended only by Parliament. The state government cannot give their own construction to the list of ST entitled to reservation.

The government resolution in this case creates an artificial distinction between migrants prior to 6.9.1950 and those subsequent to that date. Why the cut-off date should be 6.9.1950 is incomprehensible. According to government counsel, it is to preserve the rights of the really needy instead of the well-placed migrants. This argument constitutes a refutation of the right to move freely, reside and settle anywhere and practise any profession under Article 19. Nothing more pernicious of the equality promise in Article 14 and the freedoms incorporated in Article 19 can be conceived of. Further, Articles 15 and 16 permit compensatory discrimination for classes like ST. They do not warrant denial of facilities to those entitled to reservation on the entirely fortuitous timing of their parents' entry into Maharashtra irrespective of the factors that go into the fashioning of domicile.

87. ST RESERVATION NOT AVAILABLE TO SC CANDIDATE

S. Ramesh vs. Selection Committee

This case refers to the question whether a SC candidate could be accommodated in a seat reserved for ST when ST candidates were not available to fill up the vacancy for MBBS course.

Facts:- The case related to the application of the Karnataka Medical Colleges (Selection of Candidates for Admission to I Year MBBS Course) Rules, 1988. Two rival candidates moved the high court claiming the seat which fell vacant for the MBBS I year course. The question which arose was--where a medical seat of ST category out of the number of seats set apart for B.Sc Group remains unfilled, has such seat to be filled up by a candidate of the same category seeking selection from seats set apart for P.U.C. Group? The petitioner Ramesh, a B.Sc candidate, applied for a medical seat in the SC category. Meanwhile, Savithramma applied for a medical seat in the P.U.C. Group under the ST category. Both of them failed to get a seat as they fell next below the successful candidate in their respective categories. Since a seat of ST category out of the seats available for the B.Sc Group remained unfilled for want of a candidate, both of them put forth claims for that seat. The selection committee did not decide on the rival claims. So both of them moved the high court.

Ruling:- The decision largely turned on the interpretation of the rules. In the end, the court ruled that where a medical seat of ST category in the B.Sc Group remains unfilled, such seat has to be filled up by a candidate of the same category seeking selection from the P.U.C. Group. Therefore, the ST candidate with P.U.C. qualification became eligible for the seat.

88. RESERVATION BY EXECUTIVE ORDER

Comptroller & Auditor General vs. M.L Mehrotra

This case deals with reservation in the audit department where there was no reservation for promotion. The Supreme Court held that the government could direct reservation by executive orders.

87. AIR 1990 Karnataka 30
88. AIR 1991 SC 2288

Facts:- Four senior officers challenged the circular issued in 1973 by the Comptroller and Auditor General of India providing for reservation for SC/ST officers in promotion posts. The Allahabad high court allowed their writ petitions and directed the authorities not to enforce the circular and promote three SC/ST section officers to the post of Accounts Officers on the basis of the circular. Therefore, the Comptroller appealed to the Supreme Court. The high court took the view that:

1) there was no reservation for SC/ST under the recruitment rules, 2) the circular was not based on a policy decision, 3) the government cannot supplement the statutory rules to fill up gaps; it could be done only by amending the statutory rules according to Article 148 (5) of the Constitution.

Ruling:- The Supreme Court overruled this view and held that the circular was valid and binding. It said that the high court was not right in stating that there could not be an administrative order directing reservation. The rules did not provide for reservation. But the government could direct reservation by executive orders. Administrative orders cannot be issued in contravention of the statutory rules but it can be issued to supplement the statutory rules. (See also AIR 1981 SC 298)

The high court had also faulted the circular as it was not issued by the President after consultation with the Comptroller. The Supreme Court stated that the circular was not issued by the President, but by the Comptroller. There was, however, proper consultation between the government and the Comptroller for issuing the circular. The fault pointed out by the high court was only in the form, and not with regard to substance. The circular ought to have been issued in the name of the President. But since the government had approved the circular, and since it was in accordance with the declared policy of reservation, the Comptroller cannot be restrained from enforcing it.

89. NO RIGHT TO GET SPECIAL TRAINING

AP State SC Welfare Association vs.
Director of Engineering, Indian Airlines

The problem in this case was whether there could be reservation for highly sophisticated jobs, where many lives would depend upon the efficiency of the person selected. The court answers, 'No'.

Facts:- When the airlines acquired Airbus aircraft, it sent its employees for specialised training to France so that they may be able to handle the new aircraft. The petitioner-association alleged that not a single SC candidate had been deputed for training among the 48 though there is a fixed quota of 25 per cent for SC/ ST. The grievance was that SC candidates were filtered at the screening test on the pretext that they did not pass the required test. They wanted that merit *inter se* of the SC/ST candidates should be evaluated and they should not be judged in relation to the general candidates. In other words, even if SC candidates were found to be deficient in certain areas, they should still be selected for the sophisticated training course.

Ruling:- The high court dismissed the petition, after dealing with the two main issues. The first was whether there was any fixed quota of 25 per cent in this matter. A reading of the presidential directive showed that there was no such definite quota. It only recommended that adequate margin should be provided to as many SC/ST candidates as were sponsored by the ministries and that it would be useful to earmark 25 per cent of the seats to SC/ ST wherever possible. The court also noted the airlines statement that an SC candidate had indeed been selected on merit.

The second issue was whether the merit of SC/ST should be assessed *inter se* or in relation to the general candidates. If selection was made on *inter se* merit, efficiency would have to be compromised. The lives and safety of hundreds of passengers would depend upon the expertise and efficiency of such personnel. "The question in all such matters is not whether a particular person belongs to a particular caste or not but that the best avail-

89. AIR 1991 AP 88

able persons irrespective of their caste or any other consideration should be put in charge of such operations which are of a highly sophisticated nature," the judgement underlined. It was held that since there was no rule of relaxation in the qualifications required, no one could claim selection on the basis of reservation. It was more so as there was no positive reservation. The court cannot substitute its opinion in place of expert guidelines of the ministry.

Since the question of efficiency crops up frequently in the debate about recruitment of SC/ST, it would be useful to examine certain passages from Supreme Court judgments on this subject. In Ashok Kumar Gupta vs State of UP [1997(3) SCALE 289], this question was raised by engineers who lost promotions because of caste reservation. The judgement ridiculed the argument of efficiency in the following terms:

"Efficiency in service attracts the well-known hyperbole that insanity cannot be cured until married and marriage cannot be celebrated till sanity is cured. Unless one is given opportunity and facility by promotion to hold an office or a post with responsibilities, there would be no opportunity to prove efficiency in the performance or discharge of the duties. Without efficiency one cannot be promoted. How to synthesise both and give effect to the constitutional animation to effectuate the principle of adequacy of representation in all posts or classes of posts in all cadres, service or grade is the nagging question."

Discussing the question of "efficiency in administration", the Supreme Court in DTC vs DTC Mazdoor Congress [(1991)Supp 1 SCC 600] said: "If a superior officer develops liking towards a sycophant, though corrupt, he would tolerate him and find him to be efficient and pay encomiums; and corruption in such cases stand no impediment. When he finds a sincere, devoted and honest officer to be inconvenient, it is easy to cast him/her off by writing confidential reports with delightfully vague language imputing to be `not upto the mark', `wanting public relations', etc. At times they may be termed to be `security risks' (to their activities). Thus they spoil the career of the honest, sincere and devoted officers. Instances either way are galore in this regard."

In K C Vasantha Kumar vs State of Karnataka [1985 (Supp) SCC 714], the Supreme Court said: "We do not mean to say that efficiency is to be altogether discounted. All that we meant to say is that it cannot be permitted to be used as a camouflage to let the upper classes take advantage of the backward classes in its name and to monopolise the services, particularly the higher posts and the professional institutions. We are afraid we have to rid our minds of many cobwebs before we arrive at the core of the problem."

90. CONFUSION OVER CASTE NAMES

Meena Mohanlal Merchant vs. State of Maharashtra

Sometimes persons with a particular caste label may lose their claim because their occupation comes under a different caste name in the state notification listing Other Backward Classes. Here is a case of a girl whose father gave one name for his tailor caste, which was not recognised by the Maharashtra government. She had to fight against what the high court called "hyper-technically."

Facts:- The petitioner got a medical seat reserved for "other backward classes" in Maharashtra on the ground that she belonged to "Hindu-Darji" caste. Later, the caste verification committee found that her caste was not a notified one in the state. In Maharashtra, the equivalent of "Hindu-Darji" was "Shimpi" caste. Both are tailor communities. But her father's school certificate showed that they belonged to Darji caste, which was not recognised in Maharashtra. Therefore, her admission was cancelled. So she moved the high court. She argued that Darji and Shimpi were one caste. In Hindi and Gujarati tailors are called Darji and in Marathi they were called Shimpi. It was also shown that her ancestors were born and brought up in Maharashtra. On the other hand, state counsel maintained that the castes were different. If they were the same, it would have been mentioned in the notification of backward classes.

Ruling:- The court allowed the petition and directed the university to admit her. It said that there was no dispute that the

90. AIR 1991 Bombay 74

student belonged to a tailor community. It was only the use of a particular name. It was quite possible that in a certain locality of the state where the people spoke Hindi or Gujarati, "Shimpi" may be called and known as "Darji". If it was the case of the government that her father was not a tailor by caste but he was carrying on the business of a tailor, then she would not be entitled to the benefits available to other backward classes. But that was not the argument. The record showed that her father belonged to a traditionally tailor caste in the state. The caste verification committee ignored the fact that Darji and Shimpi were synonymous. It took a hyper-technical view. "Such technical attitude defeats substantial justice. The concerned authorities should have taken a practical and realistic view of the matters," the judgement said.

91. 'HINDUISATION' OF SCHEDULED TRIBE

Gopal Singh Bhumij vs. Giribala Bhumij

This judgement of the Patna high court deals with the question whether scheduled tribe members who claim to be Hindus can be recognised as such. The answer has an impact on the succession law as the tribes are governed by their customary law and the Hindus by the Hindu law.

Facts:- Giribala filed a partition suit claiming half the property in her family. She asserted that the family was following Hindu customs. Her brothers contested this. They claimed that they belonged to a scheduled tribe, and were therefore governed by their customary laws and not by the Dayabhag School of Hindu law. According to their family custom, daughters were completely excluded from inheriting properties either of a male or a female. The sub-judge decreed the suit in favour of the daughter relying on witnesses. According to witnesses, the parties spoke Bengali, their children attended Saraswati Puja in their school and they were sufficiently Hinduised and were governed by the Dayabhag system.

Ruling:- On appeal, the high court set aside the order of the sub-judge. Excerpts from the judgement:

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91. AIR 1991 Patna 138

There cannot be any doubt that it is possible that aboriginals of non-Hindu origin can become sufficiently Hinduised so that in the matter of inheritance and succession, they are prima facie governed by the Hindu law, except so far as any custom at variance with such law is proved.

However, the question as to whether the parties are "Hinduised out and out or have `become' sufficiently Hinduised" are questions of fact. The burden of proof is initially upon the plaintiff to show that the parties have become "Hindus out and out" or "have become sufficiently Hinduised" so as to be governed in the matter of succession by any school of Hindu law.

The husband of Giribala had admitted that his sisters did not get any share in his father's property which clearly go to show that Hindu law was not followed by the parties.

Had the parties been Hindus or had become sufficiently Hinduised, the dead body would have been cremated and would not have been buried. No Hindu will bury the dead bodies. Further, it was evident from the evidence that marriages in Sanghai form was a common feature among the parties which was not followed by the Hindus.

The sub-judge was swayed away by the facts that the parties spoke Bengali and put their signatures in their depositions in Bengali. That fact was hardly relevant for deciding the issue.

Applying the doctrine of 'lex loci', it must be held that normally the Hindus of Bihar are governed by the Mitakshara school except in some areas. Even in Bengal, a section of the people are governed by the Mitakshara school. Thus the language spoken by the parties was hardly relevant for coming to the conclusion as to whether the parties who were aboriginals had become Hindus. Taking all these facts and circumstances into consideration, Giribala has not proved that the parties were Hindu.

92. BACKWARD CLASSES CAN CLAIM UNRESERVED SEATS

Sida Nitin Kumar vs. Gujarat University

This case deals with the perennial competition for admission to professional courses. The Gujarat high court rules that those who are entitled to reserved quota can also contest in the unreserved merit quota in medical colleges.

Facts:- The two petitioners belonged to "socially and educationally backward class" of communities and wished to seek admission to post-graduate courses after passing MBBS from Gujarat University. There was much confusion regarding the procedure adopted by the university for selection. In essence, the candidates were asked to make a choice--whether to be considered in the unreserved category or the reserved category. This was to be made in the beginning. Once they chose one category, they lost their claim to the other. This was challenged by the candidates as violative of the Constitution. They argued that they could not be denied their rights by asking them to choose one category while they had a right for both.

Ruling:- The high court allowed their petition and asked the university to consider them for both categories. The decision of the university denying the petitioner's claim to the seats in the common merit list was held to be illegal and void.

The court said that while the posts were reserved for the backward classes, they could not be asked to occupy only the reserved seats/posts. They would be and should be free to occupy any seat or post including unreserved posts. But while claiming unreserved posts, they should prove their merit like any other citizen who was not entitled to reservation. To deny them the right to occupy any seat other than the seat reserved would amount to denying them the right to equality under Article 14 of the Constitution.

Moreover, such a course would result in compartmentalisation of society, the judgement stressed. The Constitution aims at cohesion of society and not at disintegration of society into castes and communities.

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92. AIR 1991 Guj.43

Therefore, no provision of law or scheme of reservation or special provisions conferring benefits on members belonging to the weaker sections can be interpreted so as to lead to disintegration of society.

The policy and procedure adopted by the university ask a candidate to waive his fundamental right of being treated equally and claim seat from unreserved pool of seats on his own merits. In turn, the university relieves itself of its obligation to enforce the fundamental rights of the citizens. The "pernicious" result flowed from the "generous steps" of granting choice at the stage of filling in the form and again at the stage of interview. He is in fact asked to waive his fundamental right of equality. To claim the benefits of reservation or special provision, he is not required to waive his fundamental right or his right cannot in any way be truncated.

Moreover, a student belonging to backward classes would be tempted to opt for reserved seats only, since he would not know what would be in store for him if he waited till his turn reached in the common list. Thus a meritorious student, even though he may be one of the first ten topping the merit list, would be tempted to secure a reserved seat. He would thus deny seat to another candidate belonging to the reserved category, defeating the very purpose of reservation.

93. COURT LEAVES ADMISSION CRITERIA TO EXPERTS

Bhupinder Singh Mahay vs. State of Punjab

Where admission to post-graduate courses is concerned and competition is tough and seats are few, courts show reluctance to interfere in the methodology adopted for selection of candidates. This is one such case where the court declined to disturb the rules or selection of candidates.

Facts:- Applications were invited for post-graduate medical courses in the two state medical colleges, though they were affiliated to different universities. SC/ST candidates were given 25 per cent quota. Roster points were fixed according to the seats, speci-

93. AIR 1991 P&H 7

ality and the college. Some SC/ST candidates alleged that the seat reservation by fixing the roster points were erroneous. There being 18 seats in both colleges, 9 in each specialities, 5 seats should have been given to SC/ST. It was also contended that only three SC candidates were admitted against the reserved quota. In reply, the government stated that the roster points were fixed keeping in view the maximum limit for reservation at 30 per cent. There was separate reservation for each specialty and for each college. If the petitioners' formula was accepted, it would result in 100 per cent reservation.

Ruling:- The high court held that there was no arbitrariness in fixing the roster points of reservation quota. The balancing between the maximum reservation to be less than 30 per cent and providing of reservation at 25 per cent has been most reasonably worked out. The college authorities have acted fairly.

The interpretation put by the petitioners on the instruction on reservation would push it to the point of resulting in perpetuating injustice whereby meritorious students would be deprived of their educational career. The nation will be deprived of the talents in the field of medicine. Efficiency will be sacrificed at the altar of expediency. The policy of reservation cannot be insisted to an unreasonable extent. Reservation may be a laudable and praiseworthy act, but at the same time it cannot be made so disproportionate and large that efficiency and talent are effaced from the national scene. The nation's right to have the meritorious persons in such an important field as medicine cannot be lost.

"We are of the considered view that in the affairs of education where the experts determine the methodology for admission of the meritorious students, no interference should be made, unless it is shown to be arbitrary, or for some reasons the selection is shown to be bad," the judgement said. "It should be left to the experts selecting the candidates. There is no malice attributed to the authorities in adopting the process and methodology of preparing the merit for selection, nor there is anything to show that the petitioners have been treated unequally."

94. RESETTLEMENT OF TRIBALS OUSTED BY THERMAL PROJECT

Banwasi Seva Ashram vs. N.T.P.C.

This was a public interest litigation filed by a social organisation, Banwasi Seva Ashram, on behalf of the tribals in Mirzapur district of UP. The Supreme Court protected the interests of the tribals to some extent.

Facts:- It was alleged in the petition that the tribals living in the forest area were being mercilessly thrown out to make way for a thermal power project of the National Thermal Power Corporation. This was against the fundamental rights of the tribals to make a living as they were deprived of their traditional occupations and land. They should be given alternative sites for pursuing their occupation, it was pleaded. The NTPC during the ten-year litigation had submitted that it had taken up rehabilitation of the affected tribals. While it maintained that 678 families would be affected by the project, the petitioner contended that more than 1,500 families would be affected.

Ruling:- In view of the dispute over the numbers, the court asked NTPC to submit a list of the evictees to the district judge. The petitioner also would submits its list. The judge would then finalise the list.

The court also imposed strict conditions on NTPC for ousting tribals. They should be given housing plots measuring 60 ft x 40 ft, a shifting allowance of Rs 1,500 and free transport, Rs 3,000 as lumpsum rent, monthly subsistence allowance, jobs through NTPC contractors, civic facilities for the rehabilitation township including hospitals, schools and sports centres.

The court asked NTPC to give preference in jobs to oustees in class III and IV posts subject to their suitability and eligibility. Shops and other business premises within the NTPC campus must be offered to the evictees. NTPC shall also assist the evictees in self-generating employment schemes such as carpentry training, carpet weaving and sericulture. The deputy commissioner of the district shall supervise the rehabilitation. He shall determine the

94. AIR 1991 SC 920

compensation in respect of land, crop, house and any other legitimate claim based on the existing rights of the oustees. The petitioner along with a project officer of NTPC and Sarpanch of the area shall verify the extent of the property of the oustees who are likely to be evicted. The district judge was given a deadline within which all compensation claims shall be settled.

95. MANDAL JUDGEMENT ON BACKWARD CLASSES

Indira Sawhney vs. Union of India

Forty-three years after the founding of the Indian republic, the Supreme Court was asked to settle the law on reservation for backward classes. The occasion arose when the short-lived V.P. Singh government at the Centre decided to implement the Mandal commission report. It was followed by riots in most parts of northern India.

Facts:-Though the Constitution guarantees equality of opportunity in matters of public employment, it also provides for reservation of posts in favour of any backward classes. A commission, called the Kaka Kalelkar Commission, was set up in 1953 to study the conditions of the socially and educationally backward classes. Its report did not find favour with the then government and it was not discussed in Parliament. The second commission called the Mandal commission was set up in 1979. The report was submitted in 1980. However, no action was taken by the governments at the Centre till 1991 when V.P. Singh decided to implement the recommendations. It was seen as a political ploy to defeat his opponents in Parliament. There were howls of protests from the upper castes, and many youths in the northern cities immolated themselves against the government decision. Southern states, where reservation was a fact of life even before the Constitution, remained comparatively calm. Ultimately the issue was taken to the Supreme Court through nearly four score petitions. They were decided by a nine-judge bench. The majority view was delivered by Justice Jeevan Reddy. Only a very brief summary is given here.

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95. AIR 1993 SC 477

Ruling:- The claim of Other Backward Classes and Other Weaker Sections must be considered consistently with maintenance of efficiency in administration.

Complex social, constitutional and legal questions upon which there has been sharp difference of opinion in society could more satisfactorily be settled by political processes. The issues have been relegated to the judiciary--which showed both the disinclination of the executive to grapple with these sensitive issues as also the confidence reposed in judiciary.

Provisions for reservation in favour of backward classes need not be made necessarily by Parliament or legislature. They can also be made by the executive wing of the Union or the state. When reservation is made by an executive order, it becomes effective and enforceable the moment it is made. Enactment into law or incorporation into the rules is not necessary to make it enforceable.

For assuring equality of opportunity, it may well be necessary in certain situations to treat unequally situated persons unequally. Article 16(1) permits such reasonable classification to promote equality. Article 16(1) and 16(4) should be read harmoniously. The second provision is not an exception to the first.

Under Article 16(4), not only reservation, but also all supplemental and ancillary provisions including exemptions, concessions and relaxations are permitted.

Reservation under Article 16(4) is not exhaustive. Reservation can be made under Article 16(1) also in exceptional circumstances.

The phrase 'Backward Class' in Article 16(4) is not antithetical to 'caste', and caste can be taken as a backward class of community. In identifying backward classes, caste can be a consideration. Test to identify backward classes need not be uniform.

In identifying backward classes, the theory of 'lingering effects' of past discrimination is not relevant as discrimination is still prevalent in the country. Identification of only those who suffer from lingering effects of the past would not be proper.

Article 16(4) contemplates social backwardness, and not social and educational backwardness.

While reserving posts, the creamy layer must be excluded to make the class a truly 'backward' class. The government was asked to specify the basis of exclusion whether based on income, land holding or other criteria.

Neither the Constitution nor the law prescribes the procedure of identification of backward classes. The court cannot lay down the method either. It must be left to the authority appointed to identify them.

The satisfaction of the state as to the inadequacy of representation of backward classes in services is open to judicial scrutiny.

Economic criterion alone cannot be the criterion for identifying backward classes. It may be only one, in addition to social backwardness and occupation-cum-income.

Further classification of backward classes into backward and more backward is not permissible.

Reservation for services under Article 16(4) should not exceed 50 per cent. The rule can be relaxed only in extraordinary situations.

A SC member getting selected in open competition on the basis of merit should not be counted against the reserved quota.

Article 16(4) does not contemplate reservation in promotion as well. It is true that the expression 'appointment' takes in appointment by direct recruitment, by promotion and by transfer. But the question of promotion should be answered by a combined reading of Article 16(4) and Article 335. Reservation theoretically means impairment of efficiency. There can be no justification to multiply 'the risk' by holding that reservation can be made in promotions also. Otherwise it would affect the rule of equality.

Reservation for backward classes is not against merit. Efficiency, competence and merit are not synonymous concepts.

Reservation must be consistent with requirements of efficiency of administration. There should be minimum marks for SC/ST candidate also. Reservation for backward classes cannot be made in posts where merit alone counts, as in defence services, technical posts, airline pilots or superspecialities in medicine, engineering etc.

Ordinarily, there should be no judicial review of reservation for backward classes. It is a matter of policy of the government. The court would normally extend due deference to the discretion and judgement of the executive.

The court directed constitution of a permanent body to identify and deal with complaints of inclusion and non-inclusion of backward classes.

The Mandal Commission report was not invalid because it was based on 1931 Census. Nor would its implementation result in discontent and demoralisation. It would not curtail the concept of equality.

Reservation for backward classes should be estimated with reference to representation in different grades and categories.

96. SC/ST ATROCITIES PREVENTION ACT UPHELD

Jai Singh vs. Union of India

The Rajasthan high court fully upheld the SC/ST (Prevention of Atrocities) Act 1989, as it attempts to abolish 'untouchability' and caste differences in tune with the constitutional mandate under Article 17.

Facts:- This was a petition challenging the Act, decided by the full bench of the high court. The facts are not discussed in the judgement.

Ruling:-The high court upheld the whole Act, stating that it was a legislation falling under Article 17 of the Constitution. The Preamble to the Act made it clear. The main challenge was to Section 18, denying anticipatory bail to the accused. It was rejected, stating that this was a special legislation like the Terrorist and

96. AIR 1993 Rajasthan 177

Disruptive Activities (Prevention) Act which also denied anticipatory bail. This power is an unusual power, and it is entrusted to only higher echelons of judiciary. The right to anticipatory bail did not flow from Article 21 either expressly or impliedly. The right has been conferred by the statute enacted by Parliament. It could also take away the right. Article 21 is not intended to be a constitutional limitation upon the powers of the legislature. Parliament has power to lay down that Section 438 CrPC would not apply to cases covered by a special legislation.

The MP high court had also upheld the Act, but it dissented from the Rajasthan high court view on the point of anticipatory bail. The state government appealed to the Supreme Court. The apex court fully upheld the Act [(1995) 3 SCC 221].

The Supreme Court upheld Section 18 thus: "The exclusion of Section 438 in connection with the offences under the Act has to be viewed in the context of the prevailing social conditions which give rise to such offences, and the apprehension that perpetrators of such atrocities are likely to threaten and intimidate their victims and prevent or obstruct them in the prosecution of these offenders, if the offenders are allowed to avail of anticipatory bail."

The apex court stated that Article 21 enshrined the right to live with human dignity, which was denied to the Harijans for centuries. Looking to the historical background, there is a justified fear that the provision for anticipatory bail would be misused to terrorise the victims.

The court rejected the argument that bail was not available even in the case of "minor offences" under the Act. The offences enumerated in Section 3 are such as "to say the least, denigrate members of SC/ST in the eyes of society and prevent them from leading a life of dignity and self-respect. Such offences are committed to humiliate and subjugate members of SC/ST with a view to keeping them in a state of servitude. These offences constitute a separate class and cannot be compared with offences under the Indian Penal Code."

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100. 1994 (3) Scale 935

97. LAW ON MIGRANTS' RIGHTS REITERATED

Action Committee vs. Union of India

Despite the earlier judgement in Marri Chandra Rao case, the issue was raised again in 1994 and another constitution bench reiterated that the migrant SC/ST could not claim benefits in the new state.

Facts:- This was a public interest petition by the "Action Committee on the issue of Caste Certificate to SC/ST in the State of Maharashtra". Their grievance was that Maharashtra has denied the benefits available to SC/ST specified in relation to the state to those from outside the state. The denial was violative of Articles 14, 15 (1), 16(2) and 19 of the Constitution. Those belonging to SC/ST, wherever they are, are economically backward, it was argued. They had to leave a state to escape indignities and atrocities and to search for livelihood. Earlier there was no discrimination in different states but the situation changed drastically after the central government issued a communication to all state governments on March 22, 1977. This was further confirmed in later communications. These were challenged in the petition.

Ruling:- The Constitution bench dismissed the arguments and approved of the ruling in the Marri Chandra case. Further, it explained--

"We may add that considerations for specifying a particular caste or tribe or class for inclusion in the list of SC/ST or backward classes in a given state would depend on the nature and extent of disadvantages and social hardships suffered by that caste, tribe or class in that state which may not exist in another state to which persons belonging thereto may migrate. Coincidentally it may be that a caste or tribe bearing the same nomenclature is specified in two states but the considerations on the basis of which they have been specified may be totally different. So also the degree of disadvantages of various elements which constitute the input for specification may also be totally different. Therefore, merely because a given caste is specified in State A as a Scheduled Caste does not necessarily mean that if there be another caste

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97. AIR 1994 SC

bearing the same nomenclature in another state the person belonging to the former would be entitled to the rights, privileges and benefits admissible to a member of the Scheduled Caste of the latter state `for the purposes of this Constitution'. This is an aspect which has to be kept in mind and which was very much in the minds of the Constitution-makers as is evident from the choice of language of Articles 341 and 342 of the Constitution."

98. WEAKER SECTIONS IN COOP MANAGING COMMITTEES

State of UP vs COD, Chheoki

The Supreme Court declared in this case that the provisions of the UP Cooperative Societies Act providing for reservation for women and weaker sections were valid and in tune with the Constitution.

Facts: The UP government tried to bring democratic character in the management of cooperative societies by giving representation to SC/ST, women and other backward classes. By an amendment to the state cooperative law, OBCs were made members of the managing committee. This was challenged by a society and the Allahabad high court struck down several provisions enabling such reservations. Therefore, the government appealed to the Supreme Court.

Ruling: The Supreme Court reversed the high court ruling and upheld the law. The provisions challenged were consistent with the policy and object of the Constitution, which provided for socio-economic and political justice to all citizens. The judgement further said that the state government has the power to make such provisions in furtherance of the constitutional goals.

99. CARRYING ON OF SPECIFIC OCCUPATION NOT ESSENTIAL

Rafia Shaheen vs. State of Karnataka

This case raises a curious question as to whether the parents of a backward class candidate should continue to carry on their

98. Decided in April 1997
99. AIR 1994 Karnataka 295

traditional occupation so that the candidate can become eligible for reserved seats. The parents in this case were beggars. Should they continue to be beggars? The Karnataka high court said, No.

Facts:- The candidates applied for admission to professional colleges in Karnataka on the basis of their caste certificates which showed that they belonged to a Muslim group called 'Darvesu'. They were selected for engineering course. But the caste certification committee rejected their claim that they belonged to the Darvesu group. When they moved the single judge of the high court, he dismissed the petition relying on AIR 1982 Kant 40 and holding that the mere production of tribal certificate would not be enough; it was necessary for the members of the family to actually show that their occupation was begging. In this case, the father of a petitioner was a school inspector and that of the other a government employee. This view was challenged before the division bench of the high court. It was argued by the appellants that Darvesu was included in the list of backward tribes. It was further argued that economic criterion was not applicable to this group under the government orders, and mere belonging to that group was enough. Moreover, the government view would go against the very object of upliftment of the backward tribe. It was also argued that the 1982 judgement was overruled by the Supreme Court in the Mandal judgement (AIR 1993 SC 477).

Ruling:- The high court allowed the petition and directed that the petitioners be given admission. It stated that persons belonging to Darvesu could not be denied reservation on the ground that their parents were not practising the occupation of begging.

The high court noted that the tribe was not covered by the economic criterion imposed on some other communities. The government order also did not specify that they should pursue their traditional occupation. This tribe was placed in the special group after studying their entire background. Once the exercise was done, the government could not add a rider that they should carry on the same occupation.

The high court observed that 'begging as the traditional occupation may not be true. The word could have been derived from 'dervoish' which means a kind of Fakir or wandering mendi-

cant, leading a religions life. Such persons could be found in most religions. So begging could be part of religious life, not an occupation, the court pointed out.

100. LAND ACQUISITION FOR HARIJAN WELFARE

State of Tamil Nadu vs. Ananthi Ammal

The Tamil Nadu Acquisition of Land for Harijan Welfare Scheme Act 1978 was struck down by the Madras High Court as unconstitutional. The Supreme Court reverses that judgement here and upholds the validity of the Act.

Facts:- The Act was passed to give effect to the directive principles of state policy, especially Article 46 of the Constitution (Promotion of educational and economic interests of SC/ST and other weaker sections). It was enacted to provide for acquisition of land for Harijan welfare schemes. A Harijan welfare scheme was defined to mean any scheme for provision of house sites for Harijans, for constructing, extending or improving any house, for providing any burial or burning ground for Harijans, for providing any pathway leading to such house, burial or burning ground or for providing any other amenity for the benefit of Harijans. A district collector was given power to acquire land if he was satisfied that the land was required for such a scheme. It was further provided that the provisions of the Land Acquisition Act 1894 (applicable generally) shall not be applicable to any land which is acquired under this special state law. The state law was first challenged in the high court. The main chailenge was to the special procedures laid down in the state Act. There was no need for enquiry. The decision was left to the district collector. No enquiry into the value of land was provided for. It did not provide for a reference to the court in regard to claims for enhancement of compensation. The high court struck down the whole Act stating that it did not enjoy the protection of Articles 31-C or 31-A and it was violative of Articles 14, 19 and 390-A of the Constitution. Therefore, the state government appealed to the Supreme Court. It argued that the Act was protected by Article 31-A.

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100. AIR 1995 SC 2114

Ruling:- The Supreme Court upheld the Act except a provision for payment of compensation by instalment. It must be paid as a lumpsum.

The Supreme Court rejected each of the contentions of the land owners with detailed reasoning. It rejected the comparison of the state Act with the Land Acquisition Act. The power given to the district collector (instead of the state government in the central Act) was held to be not "unreasonable or arbitrary." The court also rejected the argument that the computation of market value of the land was unfair. It examined the provision and asserted that it was more favourable to the land owner than the central Act. The procedure for appeal in case of dispute over the compensation amount was also held to be fair.

Another frequent problem on the question of land for Harijans is discussed in two cases by the Supreme Court. In Murlidhar Kesekar vs Viswanath Barde [1995 Supp(2) SCC 549], the Maharashtra government allotted 11 acres to a tribal in 1960. In 1968, Kesekar entered into an agreement with the tribal to buy the allotted land. He sought permission of the district collector for this purpose. It was denied. Kesekar moved the high court without success. In appeal to the Supreme Court, he said that the tribal was unable to cultivate the land and therefore wanted to sell it. The Supreme Court rejected all his arguments. The court pointed out that the competent authority must study all the circumstances and has the power to deny permission. A similar case was decided in R Chandevarappa vs State of Karnataka [(1995) 6 SCC 309].

101. CARRYING FORWARD RESERVED VACANCY

Malkhan Singh vs Union of India

A frequent problem arising in the case of reservation is the rule relating to carrying forward of unfilled vacancies in reserved posts. The brochure on SC/ST reservation issued by the central government is examined in this case.

Facts: The petitioner was a ST lawyer with 21 years' standing. He applied for the post of additional district judge in Delhi. One

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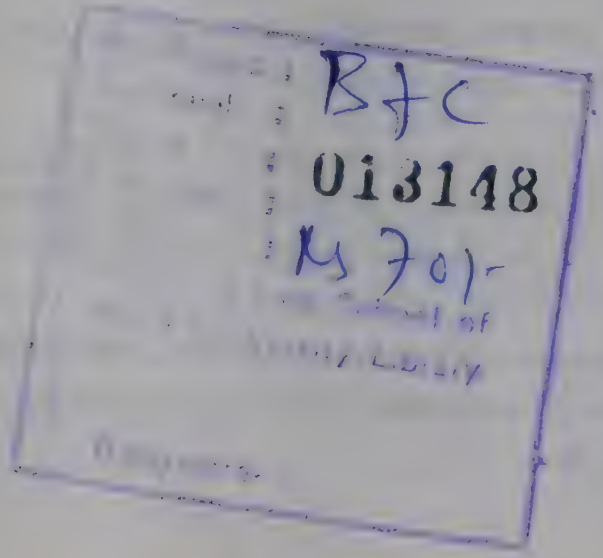
101. 1997(1) SCALE 132

post was reserved for SC and another for ST. For the SC vacancy, three were selected. No ST candidate was available. Out of the three selected for SC vacancies, the first in order of merit was appointed. During the subsequent years also, the ST vacancy could not be filled and therefore it was being carried forward again. The petitioner moved the Delhi high court claiming that according to the rules, the ST vacancy became exchangeable for SC vacancy and therefore he should be appointed in the ST vacancy. The high court dismissed his petition. So he moved the Supreme Court.

Ruling: The Supreme Court agreed with the petitioner but by the time the judgement was delivered, he had superannuated. The court examined the provisions of the brochure on reservation for SC/ST issued by the government, especially Chapters 8 and 11. Referring to exchange of reservation between SC/ST. Para 11.2 says: "While vacancies reserved for SC and ST may continue to be treated as reserved for the respective community only, ST candidates may also be considered for appointment against a vacancy reserved for SC candidates and vice versa where such vacancy could not be filled by SC or St candidate even in the third year to which reservation is carried forward." This was the case of the petitioner. This view was reaffirmed by the Supreme Court in K N Sreenivasan vs Flag Officer[(1996) 7 SCC73].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